

# **Appendix Exhibit 13**

## **jury trial transcript excerpts in prior case**

These excerpts include the complete presentation to the jury other than most trial exhibits and trial visuals. These excerpts exclude pretrial hearings, most bench conferences, the charge conference, and most of jury selection.

REPORTER' S RECORD

VOLUME 2 of 11

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
04/29/2019 6:14:22 PM  
JASMOOZ  
Clerk

Trial Court Cause No. CC-08-02072-E

JEFFREY W. CARPENTER,

) IN THE DALLAS COUNTY  
) Clerk

Pl a i n t i f f ,

VS

) COURT AT LAW NO. 5

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC. , ET AL,

Defendants.

) DALLAS, TEXAS

TRIAL ON THE MERITS

On the 23rd day of January, 2018, the following proceedings came on to be heard within the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the HONORABLE MARK GREENBERG, Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.

APPEARANCES:

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Appellate Attorney for Defendants

ALSO PRESENT: Steve Page, AV Technician

P R O C E E D I N G S

January 23, 2018

(Conference held off the record)

MOTIONS IN LIMINE (CONT'D)

THE COURT: Go ahead. You put a good amount of this on the record yesterday. Go ahead and make your argument.

MR. L. FRIEDMAN: Is Ryan here?

MR. DONOHUE: Yeah.

MR. L. FRIEDMAN: Let Ryan make it.

You know Ryan Hale, our appellate lawyer.

MR. HALE: Good morning, Your Honor.

MR. L. FRIEDMAN: The smartest one in the group.

MR. HALE: Yes, Your Honor. So, as you saw in our motion, we really think that presenting evidence of the criminal investigation, the FBI investigation, and the raid or anything related to the criminal proceedings really doesn't have any relevance as to whether the parties actually formed an oral agreement. If anything, it's, I believe, intended to be inflammatory and just to sort of assume what they're trying to prove in the first place.

THE COURT: Ms. Gibson? And you made arguments on this yesterday, too --

MS. GIBSON: Yes, Your Honor.



1 MS. GIBSON: I'm sorry.

2 THE COURT: And we're off the record.

3 (Off the record)

4 (Recess taken)

5 MS. GIBSON: I'm sorry. I think we have  
6 just, like, three exhibits to pre-admit.

7 THE COURT: All right.

8 MS. GIBSON: I apologize.

9 One -- and if y'all will confirm this is  
10 Plaintiff's Exhibit 1 -- these are transcripts of a  
11 telephone recording. Also, Exhibit 2, which is the  
12 employment agreement. I believe Plaintiff's 3 is the Email  
13 from Cheryl.

14 Mike, will you double check and confirm  
15 that for me that we agreed on Plaintiff's 3?

16 MR. DONOHUE: Yeah.

17 We have no objection to this.

18 THE COURT: And you didn't have an  
19 objection to 1 or 2?

20 MR. DONOHUE: I'm sorry. What was 1?

21 THE COURT: The transcript between  
22 Potashnik --

23 MR. L. FRIEDMAN: The uncertified  
24 transcripts --

25 MR. DONOHUE: No objection. They are what

1       they are.

2                   THE COURT:   They are what they are.   I  
3       agree.

4                   One, two, and three are admitted.

5                   MS. GIBSON:   And I believe that is it for  
6       this morni ng.

7                   THE COURT:   Very good.

8                   MR. L. FRIEDMAN:   And, Your Honor, may I  
9       approach and hand you the two exhibits that were admitted on  
10      the motion in limine?

11                  THE COURT:   For the reporter's record.

12                  (Off the record)

13                  (Recess taken)

14                  (The jury entered the courtroom.)

15                  THE COURT:   Good morning, ladies and  
16      gentlemen.

17                  (No response)

18                  THE COURT:   Let me try again.   Good  
19      morni ng, ladies and gentlemen.

20                  (The jury panel responded.)

21                  THE COURT:   My name is Mark Greenberg.   I'm  
22      the presiding judge in this court.   Welcome to County Court  
23      at Law Number 5.

24                  The case before you is the case of  
25      Jeffrey Carpenter vs. Southwest Housing and several other

1 defendants.

2 The first thing we'll do is ask the  
3 attorneys to introduce themselves and tell you who they  
4 represent. We're going to start over here to your left with  
5 Ms. Gibson.

6 MS. GIBSON: Amy Gibson and Brian Sanford,  
7 and we represent Jeff Carpenter.

8 THE COURT: All right. Thank you.

9 Mr. Friedman.

10 MR. L. FRIEDMAN: My name is  
11 Larry Friedman. My law firm is Friedman & Feiger. I  
12 represent Cheryl Potashnik Geiser. I represent  
13 Brian Potashnik.

14 Did I say that right?

15 I represent Cheryl Geiser Potashnik, both  
16 of them, Geiser Potashnik and Potashnik Geiser. And I  
17 represent Southwest Housing Management, Southwest Housing  
18 Development, and Affordable Housing Construction. And with  
19 me today are my two good partners, Michael Donohue and  
20 Jason Friedman, who is also my son. And we have issues.

21 (Laughter)

22 THE COURT: All right. Thank you, Counsel.

23 MR. L. FRIEDMAN: This is Steve Page. He's  
24 our presentation specialist.

25 THE COURT: All right. Thank you.

**JURY INSTRUCTIONS**

THE COURT: And let me introduce you -- you've already met our bailiff, Rick Wilson -- let me also introduce you to Vikki Ogden, who's over here to your left, our left. Vikki's the court reporter for this trial. She's the official court reporter for this court. It will be her job to transcribe all the proceedings, including everything that happens during this jury selection process. So during the course of this proceeding, if she doesn't hear one of your responses, she may ask you to speak up or to hold up your number so she can make sure that she gets everything taken down.

The -- when people come into the courtroom -- and I know it's already been a little bit of a long morning for you -- the things they want to know are these: They want to know what type of case this involves. This is a business dispute. The attorneys will tell you a little bit more about the nature of the case when they give you -- when they start their portion of the jury selection when they ask you questions. In order to put their questions in some perspective to the jury they will give you a little bit of a background of what their contentions are in the case.

But the purpose of jury selection is not to go into details about facts of the case, so you really won't

1 I learn the entire nature of the case until after we pick the  
2 jury and we have the opening statements. But you'll hear a  
3 little bit about the nature of the case once the attorneys  
4 begin their portion of jury selection.

5 The second thing the people who come in  
6 here want to know is how long the trial will be. The trial  
7 is going to be seven to ten days. I know that's a long  
8 time, but this is a complex case. It involves a substantial  
9 amount of issues. And I've spent a good amount of time with  
10 the attorneys and I believe that that's a fair estimate.

11 That is just an estimate, though. It's  
12 hard to predict the length of the trial. We haven't tried  
13 this case a previous time to be able to time out and measure  
14 it. It really depends on a lot of different factors. But  
15 if their estimate is seven to ten days, we're in trial  
16 Monday through Thursday, four days a week. So if it does go  
17 past the seven days or eight days it will probably go into a  
18 third week.

19 The earliest we ever start is 9:00 o'clock.  
20 Sometimes we start at 9:30 in the morning and the latest we  
21 ever go is 5:30 in the afternoon; although, we prefer to  
22 stop by 5:00 o'clock or before 5:00 o'clock. But if we  
23 start late some days because of other proceedings in the  
24 court, at 9:30 -- I'll start at 9:30. Then we may go past  
25 5:00 o'clock.

1                   So the one thing you want to know is the  
2 nature of the case. Can't tell you too much right now about  
3 that. The second thing you want to know is how long the  
4 trial is. I can only give you a rough estimate there. Then  
5 the third thing people want to know is how long will you be  
6 there on those hard benches. That's also a little bit up in  
7 the air.

8                   In just a minute we're going to start the  
9 jury selection process. Each attorney will have one hour to  
10 ask you questions. We're going to have a lunch break in  
11 between.

12                  We're going to start off with Ms. Gibson.  
13 We'll see what time she finishes. Then we may start  
14 Mr. Friedman's portion of jury selection. And we'll break  
15 his up. We'll take a lunch break. And when you come back  
16 from the lunch break we'll finish up the examination.

17                  The reason I can't tell you exactly how  
18 long the process will take is we don't know how many people  
19 we're going to need to talk to after the attorneys finish  
20 their portion of jury selection. For example, because of  
21 the length of the trial, some of you will have some  
22 conflicts that prevent you from serving the length of the  
23 trial. We want to hear what you have to say, but we need to  
24 talk to you individually about that. So those type of  
25 things depend on how many people we need to talk to.

1 But remember throughout the course of the  
2 jury selection that we will talk to you individually after  
3 the attorneys ask questions. So if there's something on  
4 your mind, if you don't want to answer a question that they  
5 ask if it involves some matter of privacy or if you're  
6 really worried about the length of the trial and you have  
7 some conflicts, you have small children at home who might be  
8 unattended, we're going to talk to you after the attorneys  
9 finish asking all of their questions.

10 So those are the three things people want  
11 to know most. And I know it's a little bit frustrating that  
12 I didn't give you a really solid answer to any of those  
13 three things, but that's the nature of lawsuits.

14 This portion of trial is referred to as  
15 jury selection. You may have heard the term downstairs,  
16 "voir dire", and they both mean jury selection. This is the  
17 portion of the trial where the attorneys spend some time  
18 with you to make sure there's nothing about this particular  
19 case that makes it difficult for you to be a fair and  
20 impartial juror.

21 When you were down in the central jury room  
22 they played a video. If you watched that video, you saw  
23 that a retired judge swore in a mock jury. If you watched  
24 that, you saw that there was three parts to the juror's  
25 oath.

1           The juror's oath is that you will render a  
2 true verdict. A true verdict is a good-faith verdict on  
3 your part. It's a verdict that is accurate, as best you can  
4 determine what is accurate. It is not a rush to judgment.  
5 It is not a verdict based upon a coin flip or any method of  
6 chance.

7           These parties have been waiting a long time  
8 for their day in court. What they deserve is a jury who  
9 will render a true verdict and not a rush to judgment.

10          The second part of the juror's oath is that  
11 you will base your verdict only on the evidence presented  
12 during the course of the trial. The evidence is sworn  
13 testimony that comes from the witness stand or documents  
14 admitted into evidence. So, the attorneys may want to ask  
15 you a few questions to make sure there's nothing about this  
16 particular case that makes it difficult for you to base your  
17 verdict only on the evidence; that you don't have some  
18 knowledge of the facts in this case from outside the  
19 evidence that might sway your decisions in this case.

20          And the third part of the juror's oath is  
21 that you will follow the law as given to you by the Court.  
22 Throughout the course of the trial and particularly at the  
23 end of the case I will give you instructions in law.

24          At the end of the case I'll give you what's  
25 called the charge of the Court. The charge of the Court



1 will have all the legal instructions and definitions that  
2 you will need to know in order to answer jury questions.  
3 And it's your answers to the jury questions that make up the  
4 verdict, and then I take your verdict and convert that to a  
5 judgment. But the instructions and definitions that I give  
6 you in the jury form are not mine or this court only.  
7 They're the law that applies to all cases like this that are  
8 tried in the state of Texas.

9 Just as an example, one of the instructions  
10 I will give you is what the burden of proof is. I will tell  
11 you that the burden of proof, in order to even answer a  
12 question yes, you must find that the yes answer is supported  
13 by a preponderance of the evidence. And I will give you a  
14 definition of preponderance of the evidence. It means the  
15 greater weight and degree of credible or believable  
16 evidence. For you to find that a fact is true, you must  
17 find that it is more likely true than not true.

18 So, the attorneys may want to ask you  
19 questions to make sure that you will follow the evidence --  
20 the law in the case, this case. And remember the law in  
21 this case is the very same law that applies throughout cases  
22 like this throughout the state of Texas. So, even if you  
23 think the law should be different, recognize that these  
24 attorneys have instructed their clients in a valiant way to  
25 their case with the idea that this jury will follow the law

1 in the case just as I'm sworn to do, just as they're sworn  
2 to do, also.

3 Again, each side will have one hour to ask  
4 you questions. When they ask you questions they're not  
5 trying to pry. They're trying to represent their clients.  
6 And they will, of course, represent their clients with great  
7 skill and distinction.

8 When they ask a question there is no right  
9 answer to their question. There's no wrong answers.  
10 There's only honest answers. The best way for you to help  
11 these attorneys represent their clients is for you to give  
12 them honest answers to their questions.

13 So, I've taken up enough of your time. We  
14 want to get the process started.

15 The attorney for the party that brings the  
16 lawsuit, the party with the burden of proof, gets to go  
17 first in asking questions during jury selection or on voir  
18 dire examination. Ms. Gibson represents Mr. Carpenter, so I  
19 will turn it over to her and let her begin asking questions.

20 (Prospective Juror 5 was dismissed in  
21 the central jury room.)

22 **PLAINTIFF'S VOIR DIRE**

23 MS. GIBSON: Thank you.

24 Good morning.

25 (The jury panel responded.)

1 This case is a business dispute over some  
2 handshake agreements. And I'm not going to go into a lot of  
3 the facts or the details of the case. Is that okay with  
4 y' all?

5 So what do you think is going to happen now  
6 at this stage during jury selection? Does anyone think that  
7 I am going to drag private stuff out of you? Okay. If  
8 anyone does, that's understandable. But here's the deal:  
9 If I ask any question and the answer is too private, you  
10 know, don't go there, you let me know and I will not dig in  
11 or go further.

12 Is there anyone here who thinks I'm not  
13 doing my job if I don't dig into that personal private stuff  
14 that somebody doesn't want to talk about? All right, I see  
15 no hands.

16 As you heard, Judge Greenberg has given me  
17 a limited amount of time to question you. So, is it okay  
18 with you if I don't specifically ask each person each  
19 question and don't get to talk to all of you an equal amount  
20 of time? Is that okay?

21 I'm first going to ask just about if anyone  
22 personally knows any of the people who might be involved in  
23 this case.

24 (Several "no" responses made by the panel)

25 VENIRE PERSON 4: Yes.

1 of commitments we make in life that are oral?

2 VENIRE PERSON 29: Wedding bells.

3 MS. GIBSON: What?

4 VENIRE PERSON 29: Wedding bells.

5 MS. GIBSON: Wedding bells.

6 How about when you-all were sworn in this  
7 morning? You took an oath. You did that orally.

8 Can anyone else give an example of some of  
9 the big commitments we make in life that are oral and not in  
10 writing?

11 VENIRE PERSON 14: To God.

12 MS. GIBSON: To God. Many people declare  
13 their faith to God and that is oral.

14 Any other examples?

15 VENIRE PERSON 12: Hippocratic.  
16 Hippocratic oath.

17 MS. GIBSON: Ah, the hippocratic oath for  
18 doctors, oral. Okay.

19 Some people feel that handshake agreements  
20 should be enforceable when it comes to business. Other  
21 people feel that only a written agreement should be  
22 enforceable and the person who did not document the deal has  
23 only themselves to blame. Which way do you lean?

24 VENIRE PERSON 28: I've watched Judge Judy  
25 now that I am --

1 MR. L. FRIEDMAN: I didn't hear. Say that  
2 again.

3 VENIRE PERSON 28: I watch a lot of  
4 Judge Judy now that I'm retired, and it has to be on paper  
5 with a signature.

6 MS. GIBSON: Okay. So you feel -- so you  
7 feel it has to be in writing and signed?

8 VENIRE PERSON 28: Absolutely.

9 MS. GIBSON: Anyone on the first row also  
10 lean toward it has to be in writing, and if you didn't get  
11 it in writing you have only yourself to blame? Juror 8, 4,  
12 3, 2, and 6. Thank you.

13 How about on the second row? Who leans  
14 toward it has to be in writing and if you don't document the  
15 deal you have only yourself to blame? Nineteen, seventeen,  
16 sixteen, fifteen, fourteen, thirteen, eleven.

17 Some people feel so strongly about the need  
18 to get an agreement in writing that once they hear a case  
19 about an oral handshake agreement they don't need to hear  
20 anything more before they think the defense should prevail.  
21 Who leans that way, even if just a little?

22 VENIRE PERSON 28: Can you explain that?

23 MS. GIBSON: Sure.

24 Some people feel so strongly that an  
25 agreement must be in writing that the only thing they need

1 to hear in a case to decide for defendants is that the case  
2 is about an oral handshake agreement. Who feels that  
3 strongly on the first row? How about on the second row?  
4 Third row?

5 VENIRE PERSON 28: I apologize. I'm from  
6 another country. I mean, I speak English well, but it's not  
7 my first language.

8 I still feel that it has to be in writing.

9 MS. GIBSON: Okay.

10 Twenty-two.

11 And who on the next row feels that  
12 strongly? Thirty-seven, thirty-eight, thirty-nine, forty.

13 Who feels --

14 VENIRE PERSON 19: So I'd just add the  
15 caveat that to me it has to be in writing if it's a  
16 substantial amount of money that's involved. If you're  
17 walking around with a builder and you go, can you fix that  
18 spot over there and he says he's going to fix it, okay.

19 MS. GIBSON: Okay.

20 VENIRE PERSON 19: But if it's a half  
21 million dollars it should be in writing.

22 MS. GIBSON: Okay. And do you feel pretty  
23 strongly about that?

24 VENIRE PERSON 19: Yes.

25 MS. GIBSON: Okay. And that's -- that's an

1 opinion you came into this courtroom with?

2 VENIRE PERSON 19: It's an opinion I have,  
3 the way I conduct business myself at work.

4 MS. GIBSON: Sure. And do you feel so  
5 strongly that if the amount is significant that you couldn't  
6 consider a handshake agreement for a large amount of money?

7 VENIRE PERSON 19: It would be very hard  
8 for me to.

9 MS. GIBSON: Okay.  
10 If you were the plaintiff in this case,  
11 would you want you on the jury?

12 VENIRE PERSON 28: What?

13 MS. GIBSON: Would you want you on the  
14 jury?

15 VENIRE PERSON 19: If it's all about a  
16 handshake deal and it's a large sum of money, no, I probably  
17 wouldn't.

18 MS. GIBSON: Okay.

19 VENIRE PERSON 20: I probably wouldn't  
20 either. I put everything in writing in an Email for  
21 facility management, whether it's fire safety or general  
22 contractor. So I don't -- an agreement, like, holographic  
23 or without a contract, to me is kind of -- I won't even say  
24 what I think it is. It's that strong.

25 MS. GIBSON: Okay.

1                   VENIRE PERSON 20: I'm not saying I  
2                   couldn't judge it, but -- or be on the jury -- but, myself,  
3                   I would never be in that situation, I don't think.

4                   MS. GIBSON: Okay. So, for you two, as far  
5                   as fairness, if you were -- if the rules were that you were  
6                   the plaintiff in a handshake case, would you want you on  
7                   your jury?

8                   MR. L. FRIEDMAN: I'm going to ask that  
9                   counsel clarify it and ask one juror at a time.

10                  THE COURT: Sure.

11                  MS. GIBSON: I'm asking Juror Number 20.

12                  THE COURT: Were you asking Juror 20?

13                  MS. GIBSON: Yes.

14                  VENIRE PERSON 20: So, on the plaintiff's  
15                  side, you're asking?

16                  MS. GIBSON: Yeah.

17                  If you were a plaintiff -- I know you  
18                  wouldn't be there, as you said, but if you were a plaintiff  
19                  on a handshake deal, would you want you on your jury panel?

20                  MR. L. FRIEDMAN: I'm going to object to  
21                  the question.

22                  THE COURT: What's your objection?

23                  MR. L. FRIEDMAN: Putting the jury in the  
24                  shoes of the plaintiff.

25                  MS. GIBSON: Your Honor, it's permissible



1 for jury selection.

2 THE COURT: Okay. Go ahead.

3 Overruled.

4 VENIRE PERSON 20: I would say no.

5 MS. GIBSON: Anyone have strong feelings on  
6 the first row about having an agreement in writing if you're  
7 going to come to the court? Jurors 2, 3, 4, 6, 8.

8 Juror 2, tell us about that.

9 VENIRE PERSON 2: You mean if everybody  
10 cannot agree on anything, handshake or verbal? But anything  
11 that involves money, involves anything, like, you know, has  
12 to be on paper, at least some sort of documentation.

13 MS. GIBSON: Okay.

14 Okay. Juror 3?

15 VENIRE PERSON 3: Yeah. Right. Proof.

16 'Cause I can tell you anything and then go back on it, and  
17 we'll end up in court and I don't have anything to show for  
18 it.

19 MS. GIBSON: Okay.

20 Is there anyone on the first row that feels  
21 so strongly about having an agreement in writing that you  
22 don't think you could be fair or maybe you aren't the right  
23 juror for a case over a handshake agreement?

24 Juror 8, you feel that strongly? Yes?

25 VENIRE PERSON 8: Yeah. I feel everything

1 should be set in stone.

2 MS. GIBSON: Okay.

3 Juror 3, you feel that way?

4 VENIRE PERSON 3: Yes.

5 MS. GIBSON: Juror 4.

6 Anyone else on the first row?

7 VENIRE PERSON 6: Yes.

8 MS. GIBSON: Juror 6. All right.

9 For -- for those of you who -- well, can  
10 you put your cards back up if you just said you felt that  
11 strongly, on the first row, including Juror 2?

12 (The first row complied.)

13 MS. GIBSON: You-all feel so strongly about  
14 having an agreement in writing that you might not be the  
15 best juror for a handshake agreement case?

16 VENIRE PERSON 3: Will we know a lot of  
17 details?

18 MS. GIBSON: So, who said -- I'll --  
19 I'll -- I'm going to come back to you. Who said absolutely?  
20 Juror 8.

21 Juror 4, tell us about that.

22 VENIRE PERSON 4: In my line of work you  
23 have to document everything. If verbal is agreed it can  
24 destroy relationships.

25 MS. GIBSON: Okay.

1 Juror 3, you agree with Juror 4?

2 VENIRE PERSON 3: Uh-huh.

3 MS. GIBSON: Okay. And you don't feel like  
4 you -- you could be really fair in a handshake oral  
5 agreement case; is that right?

6 VENIRE PERSON 3: No.

7 MS. GIBSON: Okay.

8 And -- and just to confirm, who else on the  
9 first row feels so strongly about written agreements that  
10 they don't feel like they could be fair to the plaintiff in  
11 a case over a handshake oral agreement? Juror 6.

12 And who -- Juror 3, you said yes to that as  
13 well? Is that yes, just for the court reporter?

14 VENIRE PERSON 3: Repeat the question  
15 again. I'm sorry.

16 MS. GIBSON: Sure.

17 You feel so strongly about getting written  
18 agreements in writing that you could not be fair in a case  
19 over an oral handshake agreement?

20 VENIRE PERSON 3: Right. Yes.

21 MS. GIBSON: Okay.

22 Who on the first row feels the same way as  
23 Juror 3, who hasn't already answered?

24 Okay. Row two, how many of you feel so  
25 strongly about having an agreement in writing that you don't

1 think you would be the right juror or could be completely  
2 fair in a case that's over an oral handshake deal? Okay,  
3 hold your cards up. Juror 20, 19, 16, 15, 14, 13.

4 Juror 13, tell us about that.

5 VENIRE PERSON 13: You know, I've seen what  
6 a handshake thing and people doing a handshake -- I didn't  
7 do that. So, to me, it had to be written in order to, okay,  
8 here you -- you read there, you sign there, and then they  
9 cannot change it.

10 MS. GIBSON: Row three, how many of you  
11 feel so strongly that an agreement ought to be writing that  
12 you don't feel you would be the right juror or could be fair  
13 in a case about an oral handshake agreement? Juror 28, 26,  
14 25.

15 Twenty-five, kind of?

16 VENIRE PERSON 25: Are you asking about the  
17 opposite as well?

18 VENIRE PERSON 17: See, I'm on the fence  
19 too.

20 MS. GIBSON: Juror 17, you're saying either  
21 way?

22 VENIRE PERSON 17: Yeah.

23 MS. GIBSON: Okay.

24 Who -- and I'm going to come back to you in  
25 a second, sir. Who else on the third row feels so -- felt

1 so strongly about written agreements that they don't feel  
2 like they could be fair in an oral handshake case? Juror  
3 22.

4 Is there anybody else that I missed on row  
5 three? How about row four? Jurors 39 and 37.

6 Juror 17, you said either way. What did  
7 you mean by that?

8 VENIRE PERSON 17: It would mean it would  
9 just -- know what the situation was and what -- what you're  
10 doing with it.

11 MS. GIBSON: Okay.

12 VENIRE PERSON 17: I mean, I personally  
13 think it should be in writing, but it just depends.

14 MS. GIBSON: Okay.

15 And, sir?

16 VENIRE PERSON 25: I was just talking about  
17 the verbal agreement.

18 MS. GIBSON: So you feel strongly about the  
19 verbal agreement?

20 VENIRE PERSON 25: The verbal agreement,  
21 yes.

22 MS. GIBSON: How are we doing on time?

23 THE COURT: You have six minutes left.

24 MS. GIBSON: Okay.

25 Jeff Carpenter has a medical condition that

1 All right. I think my time is about up and  
2 I want to respect that deadline, but thank y'all for your  
3 time.

4 THE COURT: All right. Thank you,  
5 Ms. Gibson.

6 Is everyone okay going another 20 minutes  
7 or so?

8 (Multiple panel members said yes.)

9 THE COURT: All right. Very good.  
10 Mr. Friedman?

11 MR. L. FRIEDMAN: I would prefer to break  
12 now.

13 THE COURT: It's really better if you can  
14 do 20 minutes.

15 MR. L. FRIEDMAN: All right. If it's  
16 better for you, it's better for me.

17 THE COURT: All right.

18 MR. L. FRIEDMAN: I need to stretch.  
19 May I, Your Honor?

20 THE COURT: Please.

21 MR. L. FRIEDMAN: All right.

22 **DEFENDANTS' VOIR DIRE**

23 MR. L. FRIEDMAN: Again, my name is  
24 Larry Friedman, and I am honored to represent Cheryl and  
25 Brian Potashnik, Southwest Housing Management Company,

1 Affordable Housing Construction, and Southwest Housing  
2 Development.

3 The Potashniks, including Cheryl Potashnik  
4 Geiser and Cheryl Geisner [sic] -- Geisner [sic]  
5 Potashnik -- not only are clients of mine but they're good  
6 friends. I've known them for over 20 years and I know them  
7 to be good people, and I'm here defending them in this case.

8 Voir dire, the French word, means speak the  
9 truth. And it's one opportunity that the lawyers in this  
10 case have to speak with the jury directly. The next time we  
11 get to face the actual jury we will give opening statements,  
12 which will be a statement of what we hope to prove or intend  
13 to prove during the case. And then the last time we get to  
14 address the jury will be closing arguments, which will be a  
15 summary of what we believe we proved during the case. But  
16 this is really the only time when we get to have a back and  
17 forth with the jury.

18 There are no right or wrong answers. This  
19 is just an opportunity to get to know the jurors, potential  
20 jurors, and find out if you're the right juror for this  
21 case.

22 What do we want to know? Whether you have  
23 any lifetime prejudices or biases that carry forward into  
24 this case. Everybody has prejudices; everybody has biases.

25 If you remember our first president,

1 George Bush, he hated broccoli. Hated it, choked on it,  
2 fell over it, would never order it. And if he saw a menu  
3 item that said steak and broccoli, he wouldn't order it. He  
4 had a prejudice against broccoli.

5 We Dallas Cowboy fans, we hate the God damn  
6 Eagles.

7 (Laughter)

8 MR. L. FRIEDMAN: Anytime their name comes  
9 up, anytime we see anything with an E on it, we hate them.  
10 We hope they lose. We hope they trip and fall and all go  
11 get the flu right before the playoff game. That's just the  
12 way it is and it's been forever. We have a prejudice.

13 And we love the Cowboys. Whether they have  
14 a winning season or losing season, we love the Cowboys. We  
15 proudly wear their star. We wear it all around the world.  
16 That's our prejudice.

17 And our biases, for those of you who have  
18 children or grandchildren, we're always biased in favor of  
19 our kids.

20 You know, I watch the news like all of you,  
21 and they parade the criminal defendant in front of the  
22 court. And that person, man or woman, has robbed 34 banks,  
23 wounded 17 people, and that person's mother comes in front  
24 of the TV cameras and say, "Not my Billy. He was a good  
25 boy." Because every mother, every father, has a bias



1 towards their child. So, every one of us comes to court  
2 with a prejudice or a bias. And that's really what this is  
3 all about. It's really a dialogue.

4 And I will tell you, for those of you who  
5 have not spoken up or had your say, there's an old adage  
6 that we lawyers believe in; which is, if you talk, you walk.  
7 The more you talk, the more likely it is you walk. And if  
8 you have nothing to say, you stay; the more likely it is you  
9 stay. So, I encourage everybody to talk as much as you can.  
10 Let us get to know who you are, what your thoughts are, what  
11 your beliefs are. And then we can -- we can determine  
12 whether or not you're a good juror for this case. And  
13 that's really -- that's -- that's all it's about.

14 We already thank you for your service and  
15 we believe in the jury system. We appreciate your being  
16 here. And for those of you who ultimately get picked for  
17 the jury, we're going to have even more deeper thanks for  
18 you.

19 You've already heard from Ms. Gibson, and  
20 you can surmise this is a case about an oral contract.  
21 Mr. Carpenter believes, alleges, that he had an oral  
22 contract. It's not clear on who he identifies, but probably  
23 with Mr. Potashnik, for over-a-million-dollar bonus.  
24 Mr. Potashnik denies it. Mrs. Potashnik denies it, who  
25 worked for the company.

1 I don't think you'll hear from anyone else  
2 who will support Mr. Carpenter's story and I don't think  
3 you'll see any evidence that wasn't formulated by anyone  
4 other than Mr. Carpenter, but this case is about an oral  
5 contract. And the jury that gets chosen will have to decide  
6 whether or not Mr. Carpenter, who's a sophisticated  
7 businessman who was hired by Southwest Management Company by  
8 virtue of a written employment contract -- you'll be able to  
9 see that written employment contract. And in that written  
10 employment contract there's a clause that says no other  
11 agreements regarding your employment -- I'm paraphrasing --  
12 can be made by -- by the parties unless it's signed in  
13 writing by both parties.

14 Nevertheless, Mr. Carpenter alleges that  
15 Mr. Potashnik was gracious enough to give him a  
16 million-dollar -- he calls it a bonus -- outside of a  
17 agreement. And, basically, that's what the case is. So  
18 that's why Ms. Gibson asked you about it and that's why it's  
19 important to focus on your thoughts and comments about  
20 following rules, contractual agreements, and things like  
21 that.

22 I've been trying not to go over the same  
23 things that Ms. Gibson went over. I'm going to try not to  
24 take up my full hour and give you back some time.

25 I want to talk about motorcycles because I

1 had two Harley -- what's your bike?

2 VENIRE PERSON 7: I have a Harley and a  
3 Honda Gold Wing.

4 MR. L. FRIEDMAN: Oh, man, I had -- you  
5 been to Sturgis? Four times.

6 Sturgis is the big motorcycle rally in  
7 Sturgis --

8 VENIRE PERSON 14: I know. I'm from  
9 California.

10 MR. L. FRIEDMAN: From LA?

11 But I've have been there four times and I  
12 rode Harleys until I fell on my head and had twenty-three  
13 stitches. And then my wife retired me from riding Harleys.  
14 I bought another Harley and hid it from her. She found it,  
15 sold it, kept the money. And I bought another Harley and  
16 hid it from her. She found it and sold it, kept the money,  
17 and then I got tired of playing that game.

18 (Laughter)

19 MR. L. FRIEDMAN: So, I am retired from the  
20 Harley-Davidson business.

21 Let me ask you a general question. How  
22 many of you have had experience with written contracts in  
23 your business? So let me take the first row first. I know  
24 that, Mr. Short, you're an attorney.

25 VENIRE PERSON 1: Yes.

1 MR. L. FRIEDMAN: And let me just ask you  
2 what kind of attorney you were.

3 VENIRE PERSON 1: Just civil.

4 MR. L. FRIEDMAN: So you've written  
5 contracts?

6 VENIRE PERSON 1: Yes.

7 MR. L. FRIEDMAN: You've enforced  
8 contracts?

9 VENIRE PERSON 1: Yes.

10 MR. L. FRIEDMAN: And over the course of  
11 your -- you look like you have (unintelligible), so I'm  
12 saying your short career as an attorney -- you recognize the  
13 importance of having agreements in writing?

14 VENIRE PERSON 1: It's important. It's  
15 not -- not every case is the same.

16 MR. L. FRIEDMAN: But it's important?

17 VENIRE PERSON 1: It's important.

18 MR. L. FRIEDMAN: And you've had experience  
19 negotiating contracts?

20 VENIRE PERSON 1: Not a whole lot. That's  
21 not the general part of my practice.

22 MR. L. FRIEDMAN: Okay.

23 So, let me continue. Anyone else on the  
24 first row had their own personal experience, their spouse or  
25 anyone in their family or anyone that they live with

1 negotiating contracts?

2 Mr. Page's friend. By the way, that's not  
3 always an asset.

4 (Laughter)

5 VENIRE PERSON 4: Understood.

6 Every year we have to sign teacher  
7 contracts set forth by the school board. And right now  
8 we're working on -- in addition to the house, we're working  
9 on a contract we have right now.

10 MR. L. FRIEDMAN: Okay. And for major  
11 commitments your experience is that the major commitments  
12 for complicated or large money matters are always in  
13 writing?

14 VENIRE PERSON 4: Yes.

15 MR. L. FRIEDMAN: And by knowing Mr. Page,  
16 that doesn't mean that if the Court instructs you to follow  
17 the law, the Court gives you instructions, that you wouldn't  
18 follow. You would follow the Court's instructions at the  
19 end of the case?

20 VENIRE PERSON 4: Yes, sir.

21 MR. L. FRIEDMAN: And knowing Mr. Page  
22 could be an asset or a liability. We haven't explored that.

23 Okay. Could you be fair and listen to the  
24 evidence presented from the jury box?

25 VENIRE PERSON 4: Uh-huh.

1 MR. L. FRIEDMAN: And you'd follow the  
2 Court's instructions, correct?

3 VENIRE PERSON 4: Yes.

4 MR. L. FRIEDMAN: And, Mr. Brock?

5 VENIRE PERSON 6: I'm the maintenance  
6 manager in the food industry, so I negotiate the contracts  
7 for refrigeration companies and stuff like that, building  
8 grounds.

9 MR. L. FRIEDMAN: You've had a lot of  
10 experience negotiating contracts. And would you -- would  
11 you agree that the important matters usually get reduced to  
12 writing?

13 VENIRE PERSON 6: Well, in the food  
14 industry it's not in writing. It doesn't happen.

15 MR. L. FRIEDMAN: It doesn't happen.  
16 That's because of --

17 VENIRE PERSON 6: Audits. Audits.

18 MR. L. FRIEDMAN: Audits and health and  
19 things like that. Okay, well, that's good.

20 VENIRE PERSON 7: I had a -- excuse me -- I  
21 had a handshake deal on a house and we went over the  
22 contract. We were moving forward with it and the lady,  
23 about three-and-a-half weeks into the contract, pulled the  
24 contract out from under me and kind of threw me to the  
25 wayside and I lost about \$1500 in the process. And it was a

1 handshake deal on the house. The contract was legal and  
2 binding but she had the right to pull it out from under me,  
3 and that has still left a wound, see.

4 MR. L. FRIEDMAN: Can we still sue her?

5 (Laughter)

6 MR. L. FRIEDMAN: I've got a card.

7 VENIRE PERSON 6: I think the house is way  
8 gone by now. So it's --

9 MR. L. FRIEDMAN: All right.

10 VENIRE PERSON 6: -- lost one.

11 MR. L. FRIEDMAN: How about you?

12 Ms. Poindexter --

13 VENIRE PERSON 8: Yes.

14 MR. L. FRIEDMAN: -- did you say you had  
15 experience with contracts?

16 VENIRE PERSON 8: No.

17 MR. L. FRIEDMAN: Okay. Good.

18 And, Ms. -- Mrs. Ciraci?

19 VENIRE PERSON 9: Yes.

20 MR. L. FRIEDMAN: Yeah. What about you?

21 VENIRE PERSON 9: A lot of our vendors are  
22 musicians, comedians, and things like that. So I've dealt  
23 with explaining to them what happens if their contracts from  
24 me (inaudible) as the state institutions cannot have and  
25 need to be changed. But other than that I don't have a

1 whole lot of contracts beyond lease agreements.

2 MR. L. FRIEDMAN: But you have some  
3 experience.

4 And, Ms. Parson?

5 VENIRE PERSON 10: I'm with the funeral  
6 business. We have to do contracts because of the State and  
7 it has to be in writing.

8 MR. L. FRIEDMAN: And what's the name of  
9 the funeral business that you work for?

10 VENIRE PERSON 10: I work for Laurel Land.

11 MR. L. FRIEDMAN: Then you know the Byrum  
12 Funeral Home?

13 VENIRE PERSON 10: It was, at that time  
14 frame, Stewart.

15 MR. L. FRIEDMAN: Yeah, 'cause that's a  
16 client of mine. Do you know them, the Byrum Funeral Home?

17 VENIRE PERSON 10: Who?

18 MR. L. FRIEDMAN: Byrum Funeral Home.

19 VENIRE PERSON 10: I know them in  
20 Lancaster.

21 MR. L. FRIEDMAN: Yes.

22 VENIRE PERSON 10: I know of them.

23 MR. L. FRIEDMAN: And that wouldn't, the  
24 fact that I represent them and they probably get my  
25 business?



1 VENIRE PERSON 10: They're greater north  
2 Dal las.

3 MR. L. FRIEDMAN: So let me ask this  
4 general question. Based on what you've heard so far, is  
5 anybody here leaning towards the plaintiff? Was that a  
6 sneeze or a --

7 VENIRE PERSON 25: I'm sorry. I was  
8 yawning.

9 MR. L. FRIEDMAN: This is like an auction.  
10 (Laughter)

11 MR. L. FRIEDMAN: If you raise your card,  
12 you're it.

13 VENIRE PERSON 25: It's the wrong sign.

14 MR. L. FRIEDMAN: If you scratch your nose,  
15 you bought it. That's 300,000.

16 (Laughter)

17 MR. L. FRIEDMAN: So this is real life.  
18 You've only heard one side. So, based on what Ms. Gibson  
19 has said, is anybody here leaning towards the plaintiff?

20 Does anybody here feel like if somebody  
21 brought a lawsuit, you know, they have an advantage? If  
22 somebody lost money or claims they lost money, that they  
23 have an advantage coming to the courthouse? Is there  
24 anybody here that feels that way?

25 Is there anybody here -- let me ask the

1 first -- the front row -- that doesn't feel they could be  
2 fair or doesn't feel that they would follow the Court's  
3 instructions and follow the law and be impartial listening  
4 to the evidence in the jury box?

5 VENIRE PERSON 8: All I have to say is that  
6 I feel everything should be set in stone, which is in  
7 writing. That's the way I feel.

8 MR. L. FRIEDMAN: Right. But if the Court  
9 instructs you that you're only to consider evidence from the  
10 jury box and gives you instructions about what it is  
11 you're -- you're to consider, in other words, what the  
12 formation of an oral contract is, what the formation of a  
13 agreement is, and what the burden of proof is, you would be  
14 able -- you would follow the Court's instructions?

15 You have to answer verbally so --

16 VENIRE PERSON 8: Oh, possibly.

17 MR. L. FRIEDMAN: -- Vikki can pick it up.

18 You're not sure about it? Okay, we'll --  
19 we can talk privately.

20 So, as to Jurors 1 through 7, minus 5,  
21 everybody here feels like they can listen to the evidence  
22 impartially.

23 Let me ask the second row. Everybody here  
24 feel they could follow the Court's instruction, be  
25 impartial, can listen to the evidence from the jury box? Is

1 there anyone in the second row? Second row feel that they  
2 can't? So everybody from Juror 11 through 19 -- we'll go  
3 with 20, 18 through 20.

4 I'm going to talk to you, 19 and 20.

5 VENIRE PERSON 20: So, everything I do at  
6 work.

7 MR. L. FRIEDMAN: I wanted a consensus.  
8 No, I'm just paraphrasing to put in --

9 VENIRE PERSON 19: Yeah. So, serving  
10 contractually bounds, and all in writing, and there's  
11 nothing in my line of work you get that's not --

12 MR. L. FRIEDMAN: And remind me again --

13 VENIRE PERSON 19: IT.

14 MR. L. FRIEDMAN: So you're in IT.

15 VENIRE PERSON 19: So IT contracts,  
16 performance based. If it's not in writing, it's not going  
17 to be enforceable.

18 MR. L. FRIEDMAN: And why is it that people  
19 in your --

20 VENIRE PERSON 19: Because a lot of times  
21 they don't -- there's -- you've got to have terms. And most  
22 terms, those contracts have performance based, and so you've  
23 got to know where you are on the way on a software contract.

24 MR. L. FRIEDMAN: And you're an honest  
25 person.

1 VENIRE PERSON 19: Yeah.

2 MR. L. FRIEDMAN: All right. Thank you.

3 You have a bachelors degree.

4 Someone else that we did the --

5 UNIDENTIFIED VENIRE PERSON: Yes.

6 MR. L. FRIEDMAN: And as someone in your  
7 position, notwithstanding everything you said, if the judge  
8 instructs you to follow the law, to listen to the evidence  
9 from the jury box and follow his instructions --

10 UNIDENTIFIED VENIRE PERSON: Yeah. It  
11 would be a difficulty to sell, but I could.

12 MR. L. FRIEDMAN: And I've got Mr. Gillett.

13 VENIRE PERSON 20: Yes.

14 MR. L. FRIEDMAN: I love your razors. I'm  
15 not the first one that said that.

16 Tell me about yourself.

17 VENIRE PERSON 20: I'm facility manager and  
18 I -- yesterday, I had a diesel for backup generators. I  
19 didn't know I had a poorly written contract before we ever  
20 make the actual agreement part of the contract, and they  
21 couldn't even answer it. And this is a contract on Email.  
22 So, oral contracts for me can be -- even 20 grand will not  
23 be acceptable. So compensation for a million is almost  
24 laughable, and I'm surprised y'all are in court.

25 MR. L. FRIEDMAN: You're not the only one.

1 But how many people hate Emails? I get thousands a day.

2 And have you been to Cummins, Indiana? Got  
3 a leg up on you because I have been to Cummins, Indiana.  
4 It's a relatively -- it's small geographically and Cummins  
5 engines is in there. It's like Mayberry: The Cummins bank;  
6 Cummins barber shop; Cummins city mall. And it's an  
7 interesting place. I'd go back.

8 Now, you're sophisticated, do a lot of  
9 business, and you're here today, correct?

10 VENIRE PERSON 20: Yes.

11 MR. L. FRIEDMAN: If the judge instructs  
12 you to follow the law and listen to the evidence that comes  
13 in from the witness stand only, you could do that?

14 VENIRE PERSON 20: I think you asked that a  
15 few minutes ago and I said no.

16 MR. L. FRIEDMAN: I didn't ask you.

17 VENIRE PERSON 20: Oh, I'm sorry.

18 MR. L. FRIEDMAN: I asked you about the  
19 razors. But, look, could you be impartial and follow his  
20 instruction? That's the question to you, Mr. Gillett.

21 VENIRE PERSON 20: I would find it hard,  
22 difficult.

23 MR. L. FRIEDMAN: But not impossible.  
24 Difficult is one thing; possible is something else.

25 VENIRE PERSON 20: Okay.

1 MR. L. FRIEDMAN: I'm going to put you down  
2 as hard.

3 VENIRE PERSON 20: That's fine.

4 THE COURT: Y'all come over here just a  
5 minute.

6 (Off the record)

7 THE COURT: Ladies and gentlemen, we'll  
8 take our lunch break. We'll take an hour and 10 minutes for  
9 lunch.

10 As I mentioned earlier, throughout the  
11 course of the trial I'll give instructions in law.

12 (Jury instructions given)

13 THE COURT: So it is 12:17 now. If you'll  
14 be back in the hallway at 1:15, Rick, our bailiff, will  
15 bring you in.

16 Please remember your numbers. Please  
17 remember what row you're on. Please remember who's seated  
18 next to you. That way, when he brings you in, you'll be  
19 able to get seated quite quickly.

20 (The jury exited the courtroom.)

21 (Lunch recess taken)

22 THE COURT: Mr. Romano, so English is your  
23 first language?

24 VENIRE PERSON 24: Yes. Yes, sir.

25 THE COURT: Do you speak Spanish -- do you

1 speak Spanish before English or English before Spanish?

2 VENIRE PERSON 24: A little -- little  
3 English.

4 THE COURT: Okay. Did you understand all  
5 the questions that Ms. Gibson asked?

6 VENIRE PERSON 24: No, sir.

7 THE COURT: Okay. All right.

8 We're going to excuse you as a juror now.  
9 We'll take your juror badge and Vikki will take you out  
10 through the clerk's office over here.

11 (Off the record)

12 (The jury entered the courtroom.)

13 THE COURT: Welcome back. Good afternoon  
14 now, ladies and gentlemen.

15 Could I ask everybody on the front row to  
16 hold up your numbered cards?

17 (Row 1 complied)

18 THE COURT: Thank you. Put those down.

19 Everybody on the second row, would you hold  
20 up your numbered cards, please?

21 (Row 2 complied)

22 THE COURT: Thank you.

23 And everybody on the third row,

24 Mr. Romano's not here, so it should be 21, 22, 23, then go  
25 to 25.

1 (Row 3 held up their juror cards.)

2 THE COURT: Very good. Thank you.

3 On the fourth row?

4 (Row 4 held up their juror cards.)

5 THE COURT: On the fifth row?

6 (Row 5 held up their juror cards.)

7 THE COURT: Very good. Thank you-all.

8 Again, welcome back. Good afternoon,

9 ladies and gentlemen.

10 When we stopped just before lunch,

11 Mr. Friedman was conducting his voir dire examination or

12 jury selection examination. We'll ask him to continue, to

13 pick up just where he left off.

14 Mr. Friedman, sir, whenever you're ready.

15 MR. L. FRIEDMAN: Thank you.

16 DEFENDANTS' VOIR DIRE (CONT'D)

17 MR. L. FRIEDMAN: Okay. I just have a few

18 more questions and to a couple of particular jurors.

19 So I looked over my notes and your jury

20 cards at lunchtime. And I just wanted to ask Mr. Short,

21 because you're an attorney and I know you have a background,

22 a long background of practicing civil law. Based on all of

23 your experience as a lawyer practicing somewhat in this

24 field, do you think it would be difficult for you to be

25 impartial listening to this case?



1                   VENIRE PERSON 1: I've served on probably  
2 half a dozen juries before, so I don't see how it would be  
3 any different than any of the others.

4                   MR. L. FRIEDMAN: I didn't ask you directly  
5 but I wanted to ask you about that.

6                   And then help me with the pronunciation,  
7 Ms. Van.

8                   VENIRE PERSON 11: Vanantwerp.

9                   MR. L. FRIEDMAN: Vanantwerp.

10                  This case does involve some charitable  
11 corporations, 501(c)(3) independent foundation. I even  
12 think some of the partners in the 60-property portfolio may  
13 be charitable foundations. Is -- is the fact that we may be  
14 dealing with the subject of charitable foundations, will  
15 that affect your ability to be impartial in this case?

16                  VENIRE PERSON 11: No, sir.

17                  MR. L. FRIEDMAN: Okay.

18                  Ms. Billingsley, the cooker.

19                  VENIRE PERSON 17: That's me.

20                  MR. L. FRIEDMAN: Did you bring anything  
21 back from lunch?

22                  VENIRE PERSON 17: I should have.

23                  MR. L. FRIEDMAN: You are healthy. Some  
24 brownies.

25                  I have you down for saying something like

1 didn't go one way or another or something like that. What's  
2 your kind of -- what's your thought and opinion and feelings  
3 about that?

4 VENIRE PERSON 17: I think it really just  
5 depends on the situation. I would need more information  
6 before I was able to make a decision.

7 MR. L. FRIEDMAN: So you would be willing  
8 to listen to the evidence that you heard in court?

9 VENIRE PERSON 17: Yes.

10 MR. L. FRIEDMAN: You would be willing to  
11 judge it fairly?

12 VENIRE PERSON 17: Yes.

13 MR. L. FRIEDMAN: You'd be willing to  
14 follow the Court's instructions?

15 VENIRE PERSON 17: Yes.

16 MR. L. FRIEDMAN: And make your decision  
17 impartially, based on the evidence?

18 VENIRE PERSON 17: Correct.

19 MR. L. FRIEDMAN: Okay. Good with that.  
20 And then, Ms. Baker, same thing with you.

21 VENIRE PERSON 18: Yes, I could.

22 MR. L. FRIEDMAN: You'd be willing to  
23 listen to the evidence, be impartial?

24 VENIRE PERSON 18: Right.

25 MR. L. FRIEDMAN: Make your decision based

1 upon --

2 VENIRE PERSON 18: The evidence.

3 MR. L. FRIEDMAN: -- the evidence?

4 And I don't have you down as an opinion one  
5 way or another about oral agreements. Did you have one?

6 VENIRE PERSON 18: No. It would have to be  
7 based on all of the information at hand.

8 MR. L. FRIEDMAN: And have you ever made an  
9 oral agreement or anyone in your family?

10 VENIRE PERSON 18: Yes.

11 MR. L. FRIEDMAN: And what type was that?

12 VENIRE PERSON 18: Probably with my kids.

13 Ask them to do something and compromise. My kids are  
14 adults. If I say I'm going to do something, to me that's an  
15 oral agreement.

16 MR. L. FRIEDMAN: And did you reserve the  
17 right to smack them in the pants if they didn't follow the  
18 instruction?

19 VENIRE PERSON 18: Probably so.

20 MR. L. FRIEDMAN: I'm a big believer in  
21 smacking them in the pants. Five of my kids are lawyers, my  
22 oldest daughter runs her own business, and they got there by  
23 me smacking them in the pants. So something I did worked.

24 What about business agreements? Do you  
25 have a thought or feeling or opinion about whether or not

1 business agreements should be in writing?

2 VENIRE PERSON 18: I do. I'm a birth  
3 registrar and I do birth certificates at a hospital, and to  
4 me that's a written agreement. There's, like, gray area in  
5 there, but I do believe that what's written should stand  
6 firm.

7 MR. L. FRIEDMAN: Okay.

8 And, Mr. Crawford, Number 23, I may not  
9 have taken good notes, but I did get your opinions or  
10 thoughts or feelings about written agreements and oral  
11 agreements.

12 VENIRE PERSON 23: Yeah. So, with me  
13 personally, I've made a few, I guess, handshake agreements.  
14 I'm a metal fabricator, and on certain things I've done oral  
15 agreements, but that was more due to the relation of the  
16 person; so, a close friend or relative, never a -- an actual  
17 entity where I'm making a profit.

18 MR. L. FRIEDMAN: Do you have an opinion or  
19 a feeling or a thought about an oral agreement, alleged oral  
20 agreement between employer and employee?

21 VENIRE PERSON 23: Can you expand on that?

22 MR. L. FRIEDMAN: Yeah. I mean should  
23 those types of agreements be in writing or orally is okay?

24 VENIRE PERSON 23: It's a difficult thing  
25 to determine. I guess if you're talking specifically about

1 this situation, don't know anything about it. And so, going  
2 off of that, all we know is the sum of money. And that, you  
3 can't really make a decision off that, because I'm sure the  
4 underlying evidence of everything there may or may not have  
5 an influence on how someone decides their point of view.  
6 So, at this time I can't say that I have a determination in  
7 whatever has gone on.

8 MR. L. FRIEDMAN: And would the sum of  
9 money make a difference to you if it was an alleged oral  
10 agreement for over a million dollars? I mean, would that be  
11 significant to you to have in writing?

12 VENIRE PERSON 23: To an extent.  
13 Personally, for me there would have to be more of a  
14 relationship between the people.

15 MR. L. FRIEDMAN: Okay. Fair enough.  
16 And, Ms. Billingsly, what about you? Do  
17 you have an opinion? If an agreement had to do with  
18 business, would you lean more one way or another with regard  
19 to whether it should be oral or written?

20 VENIRE PERSON 17: I would think it should  
21 be written.

22 MR. L. FRIEDMAN: And what about you,  
23 Ms. Baker?

24 VENIRE PERSON 18: I would think it should  
25 be written. That's --

1 MR. L. FRIEDMAN: How much time do I have  
2 left, Judge?

3 THE COURT: You have till 2:07, about 37  
4 minutes.

5 MR. L. FRIEDMAN: Well, I think as a -- as  
6 a present to you, Judge, I'm going to give you back all that  
7 time.

8 THE COURT: Very good.

9 MR. L. FRIEDMAN: I've had enough. Thank  
10 you.

11 THE COURT: I'll take it.

12 Ladies and gentlemen, that concludes the  
13 portion of jury selection where the attorneys ask you  
14 questions. The final portion of jury selection is some  
15 individual questions. The people we need to talk to fall  
16 into one or more of several categories. We need to talk to  
17 any juror who wanted to answer a question but, for whatever  
18 reason, did not answer a question.

19 We often have jurors who are shy about  
20 speaking in front of a group. Perfectly understandable.  
21 Sometimes an attorney asks a question and you didn't want to  
22 answer in front of the entire group. That's perfectly  
23 understandable.

24 If for whatever reason you wanted to answer  
25 a question but didn't, we want to hear -- still hear what

1 you have to say. It was not speak then or forever hold your  
2 peace, but this will be speak now or forever hold your  
3 peace. We need to know what's on your mind if you haven't  
4 shared that already.

5 We also need to talk to any jurors who have  
6 any matter of privacy to bring to my attention. This would  
7 most often involve matters of medical privacy.

8 We don't go more than about an hour and 15  
9 minutes without taking a break, but we often have jurors who  
10 are uncomfortable going that length of time without taking a  
11 break. They'd rather take a very predictable break every  
12 hour on the hour for 10 minutes. That's something we can  
13 accommodate.

14 Sometimes we have jurors who are taking  
15 medication and the medication affects their ability to  
16 concentrate or to follow the evidence or to even stay awake.  
17 We don't want to ask you to not take your medication in  
18 order to serve on this jury, but we don't want to ask those  
19 type of questions in front of the entire jury panel. That's  
20 a privacy matter. But that would be an example of a medical  
21 condition that we cannot accommodate. But if you have some  
22 matter of privacy like that, a medical condition or a  
23 religious conviction against sitting in judgment of others,  
24 we want to talk to you privately and see if it's something  
25 we can accommodate or not.

1 And the third group -- and this would be  
2 the largest group -- is we need to talk to any juror who  
3 cannot commit -- cannot commit to being here for the length  
4 of the trial. The trial may be seven to ten trial days, and  
5 we're in trial four days a week, Monday through Thursday.  
6 On Fridays we hear motions in all of our other cases.

7 Sometimes we'll start at 9:00 o'clock.  
8 Most often we'll start at 9:00 o'clock. On some days we may  
9 start at 9:30. Most days we're going to try and stop by  
10 5:00 o'clock, but we may go up until 5:30 on some days,  
11 particularly if we have a witness who's not available at  
12 another time. Or if it's right in the middle of the  
13 examination, sometimes it's not fair to cut off an  
14 attorney's questioning, let the attorney go home and -- let  
15 the witness go home and study up a little bit more and then  
16 come back and ask the questions.

17 Fairness to the parties requires that we  
18 let the questioning continue a little bit past 5:00 o'clock.  
19 But we certainly recognize that there will be a lot of  
20 information. We don't want to overload you with  
21 information, so we want to keep the day at a length where it  
22 will allow you to make a fair and true judgment in the case.

23 The type of -- the reasons that you may not  
24 be able to serve include you have small children at home or  
25 you're the primary caregiver of an elderly parent and the



1 children or the parent may be unattended, may be in danger  
2 by your jury service. If -- if you have prepaid tickets to  
3 a vacation, if you have a surgery planned, if you have, you  
4 know, an important doctor's appointment, those type of  
5 things, those are the type of things we need to know about  
6 in order to determine whether or not we can excuse you as a  
7 juror.

8 If you have a business reason, most often  
9 business reasons do not allow me to excuse you as a juror,  
10 but we will certainly hear what you have to say. Sometimes  
11 we have people who have been unemployed for a period of time  
12 and just started a job this week. We don't want you to  
13 endanger a job that you just started. So I'm not saying  
14 there's no reason if it's a business reason. It's something  
15 we'll hear and we'll make a determination.

16 So having said -- and -- and if there's --  
17 if there's just something you wanted to report and you  
18 haven't reported it yet, we'll do that too. You can tell us  
19 that too.

20 So, on the first row, Jurors 1 through 10,  
21 is there anybody who knows that they need to report  
22 something to the Court, you wanted to answer a question, you  
23 have some privacy matter, you have a conflict with the  
24 length or the timing of the trial? On the front row? You  
25 got to raise up your cards. Juror Number 3.

1                   Anyone else on the front row?

2                   On the second row? Sixteen, thirteen.

3                   Okay.

4                   And, Mr. Gillett, if you'd stay behind,  
5 'cause I wanted to determine if Julie Mingus is the same one  
6 that's in this case. If you'd stay behind also.

7                   On the third row? Twenty-two and  
8 twenty-five. Anyone else?

9                   On the fourth row? Thirty-seven,  
10 thirty-eight, thirty-nine.

11                  On the last row? Forty-one, forty-one --  
12 forty-one, forty-four, forty-five.

13                  Okay, we're going to take a break here.  
14 The break's going to be about 30 minutes. If you raised  
15 your card, please stay behind. If you didn't raise your  
16 card, we're going to see you back at about 5 after 2:00. It  
17 may be a little bit longer. It depends on how long it takes  
18 for us to talk to everyone.

19                  If you raised your card, please stay  
20 behind. If you didn't raise your card but you want to  
21 report something, stay behind.

22                  So, Juror Number 2, you stay behind too.

23                  All right?

24                  (The jury panel exited the courtroom.)

25                  THE COURT: All right. The attorneys,

1 Ms. Gibson, Mr. Friedman, we're going to do this in the jury  
2 room. You can bring everyone you want or no one that you  
3 want.

4 (Off the record)

5 INDIVIDUAL VOIR DIRE

6 THE COURT: If you'll come in here.

7 (Venire Person 2 entered the jury room.)

8 What did you want to tell us, sir?

9 VENIRE PERSON 2: I have two jobs and I  
10 work overnight and daytime. And on this one is my first  
11 time working on Tuesdays and it's my second week. Last week  
12 I was absent for a doctor appointment and today for the  
13 jury, and I also --

14 THE COURT: If you are serving as a juror,  
15 will you still be working the overnight job?

16 VENIRE PERSON 2: Yeah.

17 THE COURT: So you can't even say that  
18 you'd be awake through the entire trial?

19 VENIRE PERSON 2: I can't.

20 THE COURT: Thank you for sharing that with  
21 us.

22 (Venire Person 2 exited the jury room.)

23 MR. L. FRIEDMAN: Judge, I didn't hear what  
24 he said.

25 THE COURT: He said he has a overnight job

1 MR. L. FRIEDMAN: Yes.

2 THE COURT: Okay.

3 For all of you, including the AV person  
4 whose name you should know now but I already forgot, you can  
5 stay -- you can come back up here or you go all the way to  
6 the very back row. Once we get the jurors in the box and  
7 release the other jurors, you can come back over here. But  
8 if you want to go to the very last row, you can do that, or  
9 you can come up here with counsel.

10 (Off the record)

11 (The jury panel entered the courtroom.)

12 THE COURT: Welcome back. Good afternoon,  
13 ladies and gentlemen.

14 I'm going to read the names -- we're going  
15 to have six jurors and one alternate, but we're going to  
16 refer to everybody as a juror. We're going to read your  
17 names first, make sure you're present in the courtroom.  
18 Then we're going to bring seven jurors up to the jury box  
19 and swear them in as jurors. Once they're sworn in, we're  
20 going to wish the rest of you a good day.

21 Juror Number 1, just let me know right now  
22 that you're present in the courtroom. Or, if you wanted to  
23 get up and start making your way toward Rick, that's fine  
24 too.

25 (Jury announced and sworn in)

1 THE COURT: Members of the jury, the first  
2 portion of trial is jury selection. We've completed that  
3 portion of trial.

4 As you learned during jury selection, the  
5 attorneys did not go into detail about the facts of the  
6 case. They only gave you a very general overview what was  
7 at issue. During opening statements, though, they can argue  
8 to you what they believe the evidence in the case will be.  
9 What the attorneys argue in opening statements is not  
10 evidence. It's argument.

11 The oath you just took was to base your  
12 verdict only on the evidence presented during the course of  
13 the trial. Evidence is sworn testimony that comes from the  
14 witness stand or sworn testimony that comes from a  
15 deposition -- I will explain that to you when we get to  
16 it -- or information contained in documents that are  
17 admitted into evidence. All the documents that are admitted  
18 into evidence will go back to the jury room with you when  
19 the case is over and you begin your deliberations. So you  
20 don't need to worry about trying to memorize information on  
21 a document if there's a date or a number there. You'll have  
22 the actual document itself.

23 So, what the attorney says is not evidence.  
24 And by allowing the attorneys to highlight for you what they  
25 think the evidence will be, it will make it easier for you

1 to follow the evidence once we start calling witnesses to  
2 the witness stand and presenting documents to you that have  
3 been admitted into evidence.

4 Each side will have 30 minutes for an  
5 opening statement. The attorney for the plaintiff, because  
6 the burden of proof is on the plaintiff, goes first in  
7 giving an opening statement. Ms. Gibson most likely will  
8 give the opening statement for the plaintiff.

9 Is everybody okay going for an hour before  
10 we take a break?

11 Okay, Ms. Gibson, you're up, ma'am.

12 MS. GIBSON: Your Honor, may I just move  
13 the flip chart first?

14 Is over here okay --

15 THE COURT: Yeah.

16 MS. GIBSON: -- so that everyone can see?

17 Can everyone see? Can all of you see?

18 Mr. Friedman, can you see?

19 MR. L. FRIEDMAN: Yes.

20 **PLAINTIFF'S OPENING STATEMENT**

21 MS. GIBSON: Good afternoon.

22 What brings us to the Dallas County  
23 courthouse today are the business financial safety rules  
24 that protect us all from harm. These safety rules, like all  
25 safety rules, only protect us if juries choose to enforce

1       them.

2                       Safety Rule Number 1, businesses must live  
3       up to their agreements with those who have lived up to  
4       theirs, to protect businesses, workers, and families from  
5       harm.

6                       Safety Rule Number 2, those who operate  
7       businesses in Texas must honor Texas law about enforcement  
8       of oral agreements, especially handshake agreements, to  
9       protect businesses, workers, and their families from  
10      financial harm. In Texas, oral agreements can be  
11      enforceable.

12                      Now let me tell you the story of what  
13      happened in this case. Brian Potashnik and Cheryl Potashnik  
14      operate companies that build, own, and manage apartment  
15      complexes throughout Texas and elsewhere. Brian Potashnik  
16      and Cheryl Potashnik discussed selling the business.  
17      Brian Potashnik and Cheryl Potashnik discussed the potential  
18      for a mass exodus of employees before the asset sale  
19      happened.

20                      Brian Potashnik and Cheryl Potashnik  
21      discussed how to get important employees to stay on as long  
22      as needed for the asset sale. Brian Potashnik and  
23      Cheryl Potashnik discussed bonuses as an incentive to get  
24      important employees to stay on.

25                      Let me take you to May of 2006.

1 Brian Potashnik meets at his home with his executive vice  
2 president of one of the companies. Brian Potashnik  
3 announces plans to sell the business. Brian Potashnik says  
4 he needs his vice president to stay on as long as needed to  
5 help make sure the asset sale goes through. Brian Potashnik  
6 says that if the vice president stays as long as needed then  
7 the vice president will be paid a lucrative bonus from the  
8 sale proceeds.

9 Brian Potashnik says he will work out a  
10 specific formula for the bonus later, once he has a better  
11 idea of what the asset-sale price might be. Brian Potashnik  
12 and his vice president shake hands. Brian Potashnik and  
13 Cheryl Potashnik then receive oral updates from this vice  
14 president about routine operations, due diligence work, and  
15 employee morale.

16 Brian Potashnik asks this vice president,  
17 for example, to handle some tours to market the business for  
18 potential purchasers and investors. About six months later,  
19 Brian Potashnik and Cheryl Potashnik sign a letter of intent  
20 to sell the company's assets, including -- and their  
21 individual assets related to the business.

22 Brian Potashnik again meets with his vice  
23 president of the management company. Brian Potashnik says  
24 the vice president definitely will not have a job with the  
25 purchaser after the sale. This is because the purchaser



1 already has a management company and someone in the vice  
2 president's same position. Brian Potashnik says he still  
3 needs his vice president to stay on as long as needed, even  
4 though he likely will not have a job with the purchaser  
5 after the sale.

6 Brian Potashnik, at this point, explains  
7 the specific bonus formula for his vice president.

8 Brian Potashnik and his vice president estimate the bonus at  
9 \$1,020,000. Brian Potashnik and his vice president shake  
10 hands on the deal. Brian Potashnik and Cheryl Potashnik  
11 anticipate at this time that the sale will close within less  
12 than a year.

13 Brian Potashnik and Cheryl Potashnik see  
14 that the vice president stays on and continues to work to  
15 make the asset sale happen. Brian Potashnik learns that the  
16 vice president delays a job offer in order to stay on with  
17 them as long as needed. Over a year later, Brian Potashnik  
18 and Cheryl Potashnik say the sale is about to happen. The  
19 management transition to the purchaser to take over  
20 management functions has been signed. As a result, they  
21 explain that the vice president's work is complete and he is  
22 no longer needed and free to go find other employment.

23 Cheryl Potashnik thanks the employee for  
24 his work. Cheryl Potashnik assures the employee that he  
25 will be paid once the asset sale goes through. A day or so

1 Later, Brian Potashnik and Cheryl Potashnik tell the now  
2 former vice president that they might not pay the asset-sale  
3 bonus. Brian Potashnik and Cheryl Potashnik say they are  
4 worried about whether there will be enough money to meet  
5 their personal needs.

6 A few weeks later, Cheryl Potashnik tells  
7 the former vice president that she checked with  
8 Brian Potashnik and Brian Potashnik never promised the  
9 bonus. Brian Potashnik closes the sale. Brian Potashnik  
10 and Cheryl Potashnik and all of the companies receive a  
11 total of more than 30 million in net asset-sales proceeds,  
12 meaning asset-sale revenue minus their closing cost.

13 The vice president is Jeff Carpenter. The  
14 simple truth is keeping wages that a worker has earned is  
15 stealing. These defendants are here today because they  
16 chose to violate the safety rules requiring businesses and  
17 business people live up to their agreements.

18 All of the defendants in this case sold  
19 assets in the asset sale. None of the defendants lived up  
20 to the agreement with Jeff Carpenter.

21 Southwest Housing Management is also here  
22 today because it never paid certain annual bonuses that were  
23 still owed to Jeff Carpenter. And the final reason these  
24 defendants are here today is because the defendants have  
25 refused to be accountable for the harm they've caused.

1                   Before we came to trial we had to determine  
2 a few things. First, we had to determine whether an oral  
3 handshake agreement is legally enforceable in Texas. And  
4 the law in Texas is that if the agreement --

5                   MR. L. FRIEDMAN: I object to her  
6 instructing the jury about the law within the province of  
7 the Court.

8                   MS. GIBSON: This is what I anticipate in  
9 the charge.

10                  THE COURT: Well, preface it that way.

11                  MS. GIBSON: Okay.

12                  I anticipate that the Court will charge  
13 you. In other words, give you instructions that a contract  
14 that is possibly performable within a year is enforceable in  
15 Texas as an oral agreement. I anticipate that the Court  
16 will also instruct you that when you decide whether the  
17 agreement can possibly be performed within a year that you  
18 look at the beginning of the deal, not at the end of the  
19 deal. So if, at beginning of the deal, it looks like it  
20 could be performed even possibly within a year, an oral  
21 agreement is enforceable even if it ultimately took more  
22 than a year to finish the work.

23                  And you will see in this case that  
24 Jeff Carpenter finished his obligations on October 31, 2006.  
25 Management transfer to the purchaser happened November 1,

1 2006. And at the time of the original deal struck earlier  
2 in October of 2006 when Brian Potashnik announced his  
3 specific bonus formula and they shook on the deal, they  
4 anticipated that the asset sale would happen spring or  
5 summer of 2007, unless at the outset the agreement could  
6 possibly be performed within a year. Those types of oral  
7 agreements in Texas are just as enforceable as written.

8 We also had to determine -- that's seven  
9 and eight. Is that right? We also had to determine did  
10 Brian Potashnik have the authority to make this deal on  
11 behalf of the sellers in the asset sale, but you will see  
12 that the asset-sale documents list Brian Potashnik as the  
13 agent for all of the sellers. Brian Potashnik was an owner,  
14 an officer, of each of the three defendants: Southwest  
15 Housing Development; Affordable Housing Construction; and  
16 Southwest Housing Management. Those were the three  
17 businesses they used in the organization to build apartment  
18 complexes from site selection to construction to management.

19 Brian Potashnik, in making a deal to and  
20 offering a deal for a percentage of certain proceeds that  
21 the sellers would receive, necessarily appeared to be acting  
22 on behalf of all the sellers; in addition to the written  
23 documents stating that Brian Potashnik was the agent for all  
24 of the sellers in the asset sale.

25 We also had to determine before we came

1 here is there evidence of an agreement. This is a handshake  
2 agreement that, obviously, is not in writing. And we found  
3 that we could.

4 For example, Cheryl Potashnik concedes that  
5 they intended to pay Jeff Carpenter a sales-proceed bonus  
6 from the asset sale. You will hear evidence that  
7 Brian Potashnik and Cheryl Potashnik put a program in place  
8 to set asset-sale bonuses for employees.

9 And, in fact, they asked -- or  
10 Brian Potashnik asked Jeff Carpenter to help set those  
11 bonuses for key employees that reported to Mr. Carpenter.  
12 He was asked to identify them and to help set the amount of  
13 their bonuses. These are sometimes known as stay bonuses or  
14 stay-and-pay bonuses. The intent is to get important people  
15 to stay, rather than jumping ship, to make the target more  
16 attractive and make sure the asset sale happens.

17 Further, Jeff Carpenter, it's undisputed,  
18 was not going to have a job with the purchaser after the  
19 asset sale happened. And, yet, Jeff Carpenter delayed a job  
20 offer for months in order to stay on and fulfill his end of  
21 the bargain. You will hear that Cheryl Potashnik, shortly  
22 before Jeff's work was over or around that time, looked him  
23 in the eye and said, We would never screw you; and referring  
24 to the past-due annual bonuses and the stay-bonus percentage  
25 of proceeds from the asset sale.

1 We also had to determine why the defendants  
2 did not pay Jeff Carpenter, because other employees were  
3 paid their stay bonuses even though their agreements were  
4 also oral agreements.

5 MR. L. FRIEDMAN: Objection, Your Honor,  
6 violates the limine.

7 THE COURT: Sustained.

8 MS. GIBSON: We -- we also had to look at  
9 what the motivation was to not pay Jeff Carpenter.  
10 Jeff Carpenter left at an earlier date than some of the  
11 other employees. Jeff Carpenter was to get the highest  
12 bonus amount of any of the employees, at least so far as  
13 Brian Potashnik had told him.

14 MR. L. FRIEDMAN: Objection, Your Honor.  
15 She continues to violate the limine.

16 THE COURT: You can say that there was a  
17 program. You can't talk about other -- what other people  
18 were or were not getting or supposed to get, only if there  
19 was a program. So, objection's sustained.

20 MS. GIBSON: Okay.

21 You will also hear that there was no  
22 dispute about whether or not there was actually a handshake  
23 agreement until the defendants had gotten what they needed  
24 from Jeff Carpenter. And they had started to become  
25 concerned about finances for two reasons: First, they were

1 concerned because the deal had not closed yet; and, second,  
2 they were concerned because they were having to pay  
3 attorneys to defend them against -- they were having to pay  
4 criminal defense attorneys surrounding --

5 MR. L. FRIEDMAN: Your Honor --

6 MS. GIBSON: -- investigation --

7 MR. L. FRIEDMAN: -- another violation of  
8 l i m i n e.

9 THE COURT: It's not. I said she can go  
10 into that.

11 Overruled. Go ahead.

12 MS. GIBSON: Okay.

13 They were concerned about the bills and the  
14 amount of money they were having to pay to their criminal  
15 defense attorneys in connection with a criminal --

16 MR. L. FRIEDMAN: That is a violation of  
17 the l i m i n e. Objection.

18 THE COURT: We'll take it up off the  
19 record, but the objection's overruled.

20 MS. GIBSON: Jeff Carpenter, we also had to  
21 determine what to do and how to assess later attacks on  
22 Jeff Carpenter that have happened throughout this case. And  
23 when we looked into it you will see there is evidence that  
24 this is just what people do when they don't want to pay  
25 money pursuant to an agreement. Suddenly, the person

1 doesn't deserve it or suddenly someone deserves the money  
2 more.

3 But you will hear that Jeff Carpenter  
4 completed his work. It is undisputed that he was not fired  
5 for performance. It is undisputed that he was not  
6 disciplined. The attacks on Mr. Carpenter happened after he  
7 stood up for himself concerning the handshake deal on the  
8 sale-proceeds bonus. For example, at one point  
9 Jeff Carpenter was accused of stealing a laptop, but you  
10 will see that Jeff Carpenter is continuing to Email the  
11 Potashniks -- or at least Brian Potashnik -- after he left  
12 employment to help make the asset sale go through. That and  
13 other type of evidence is inconsistent with someone who has  
14 stolen a laptop and left.

15 We also had to determine whether a written  
16 agreement with one of the defendants affects the agreements  
17 at issue in this case. And the answer is no. The only  
18 written employment agreement is with Southwest Housing  
19 Management, none of the other defendants or individuals  
20 involved in the asset sale.

21 You will also see that the agreement from  
22 the beginning contemplated the possibility of future  
23 separate deals. For example, the agreement --

24 THE COURT: Do you want Rick to help you or  
25 you know what --



1 MS. GIBSON: I am just -- it was still on  
2 defendants'. I had to switch it to plaintiff's.

3 THE COURT: All right.

4 MS. GIBSON: The original deal contemplated  
5 the agreement with Southwest Housing Management that, in  
6 addition here, there would be future agreements concerning  
7 bonuses separate and apart from this agreement. Nor does  
8 the agreement say whether later agreements about bonuses  
9 have to be in writing or may be oral. The agreement also  
10 anticipates that in the future Mr. Carpenter may be  
11 employed with any of the affiliates of Southwest Housing  
12 Management. In other words, he would be allowed at some  
13 point. He was allowed in the future to do work for the  
14 other entities and the organization.

15 We also had to look at whether a contract  
16 that says it cannot be modified in writing can actually be  
17 modified in writing. And I anticipate that you will be  
18 charged what the law is in cases like this one. Parties can  
19 orally modify an agreement even if the agreement says that  
20 modifications must be in writing. But more important, here  
21 the writing is necessary if they need to amend or alter the  
22 terms of this agreement.

23 The asset-sale bonus did not require a  
24 change in the compensation terms that were covered under  
25 this agreement. The annual bonuses after year one did not

1 require any change in the compensation covered in this  
2 agreement because this agreement only covers the limited  
3 types of compensation.

4 Your Honor, how am I doing on time?

5 THE COURT: You have till 3:12, so you have  
6 eight more minutes.

7 MS. GIBSON: Okay.

8 The agreement, the written agreement, is  
9 only with Southwest Housing Management. Covered salary. It  
10 covered year-one annual bonus. It covered expense  
11 reimbursement. It covered relocation expenses because  
12 Mr. Carpenter was recruited to move to Dallas for this job.  
13 The written agreement covered temporary housing for that  
14 relocation.

15 It covered PTO. It covered insurance. It  
16 covered car allowance. It covered severance. And it  
17 covered health club and a certain adjustment in salary  
18 concerning health insurance premiums.

19 The separate deal on the bonus for the  
20 asset-sale proceeds was for Jeff Carpenter to stay. They  
21 asked him to stay. And if he did so, they would pay the  
22 bonus.

23 The stay-to-pay bonus doesn't require a  
24 change in any of the types of benefits covered under their  
25 written agreement, whether it's considered a separate deal

1 or an oral handshake modification of this deal, because at  
2 the time that the written agreement was entered into no  
3 asset sale was on the horizon or contemplated. As a result,  
4 you will see that Paragraph 12 doesn't apply because there's  
5 no need to amend or alter those compensation terms with a  
6 separate agreement.

7 Defendants also later claim that a  
8 particular paragraph barred the compensation. Now, the  
9 defendants didn't claim this until they became concerned  
10 about the sale -- the asset sale not having closed yet and  
11 their criminal defense fees that they were incurring.

12 This provision says employee will not be  
13 entitled to any compensation or benefits pursuant to this  
14 agreement on termination except as noted below, and then  
15 they offer six weeks' base salary. But, again, this is  
16 talking about pursuant to this agreement, which is what's  
17 covered under the agreement; which is salary, the annual  
18 bonuses for the first year, and several other items, none of  
19 which involved the stay-and-pay/asset-sale bonus or annual  
20 bonuses after year one.

21 Once defendant started hinting or  
22 indicating that they might not pay the bonus they had  
23 promised all along and just about a day after defendants got  
24 everything they needed from Jeff Carpenter to help make the  
25 asset sale happen, Jeff Carpenter recorded a conversation

1 with Cheryl Potashnik and Brian Potashnik. He did so  
2 without their knowledge in the hopes that they would say  
3 something confirming the oral agreement.

4 Now, we had to look at -- even though the  
5 defendant said you have what we intended to do, you have our  
6 discussion, you have what we have promised, Jeff Carpenter  
7 at no time during the conversation stood up for himself and  
8 said this was our agreement, this was the formula, and  
9 documented that way on the telephone call why didn't this  
10 happen. And you will hear that Jeff Carpenter was stunned,  
11 generally speaking, that Cheryl Potashnik was suddenly  
12 saying he had no legal rights. You will also hear that his  
13 intent was simply to record and see what they might say on  
14 their own.

15 With respect to damages in this case, you  
16 will see that the calculation of the asset-sale bonus was  
17 pursuant to a formula and it was -- Brian, do you see the  
18 marker?

19 MR. SANFORD: Here.

20 MS. GIBSON: Thanks.

21 The formula was three percent of a certain  
22 number, which was calculated with seller's revenue, minus  
23 normal closing costs, minus the amount of stay bonuses paid  
24 out to other selected key employees. And that amount totals  
25 just over \$900,000. It was originally estimated at

1 \$1,020,000, but using the actual numbers the bonus was a  
2 little over \$900,000.

3 THE COURT: You have about one minute left.

4 MS. GIBSON: Okay.

5 And with respect to -- now, with respect to  
6 the annual bonuses, you will see that the number was based  
7 on words from Brian Potashnik's as to what he thought was  
8 owed. That number is \$400,000.

9 Thank you.

10 THE COURT: Thank you, Ms. Gibson.

11 Mr. Friedman?

12 MR. L. FRIEDMAN: Yes, sir. I'm going to  
13 move over there.

14 **DEFENDANTS' OPENING STATEMENT**

15 MR. L. FRIEDMAN: May it please the Court.

16 THE COURT: Counsel.

17 MR. L. FRIEDMAN: Counsel, ladies and  
18 gentlemen of the jury, I'm back.

19 Again, I represent Brian and Cheryl  
20 Potashnik and the three corporate defendants: Southwest  
21 Housing Management; Southwest Housing Development;  
22 Affordable Housing Construction; Brian Potashnik; and  
23 Cheryl Potashnik.

24 This case is only about one thing, whether  
25 or not Mr. Carpenter can avoid the signed written contract

1 that he entered into with Southwest Housing Management, his  
2 employer, and create an oral contract.

3 You'll not hear any evidence about safety  
4 rules or pay and stay. In fact, you won't hear any evidence  
5 from anyone who was present when an oral contract was made.  
6 You won't hear evidence from anyone who says they witnessed  
7 an oral contract.

8 And you'll hear evidence from  
9 Mrs. Potashnik and Mr. Potashnik when they say they didn't  
10 make an oral contract. And the writing surrounding  
11 Mr. Carpenter's claims that there was an oral contract from  
12 Mr. and Mrs. Potashnik will say we can't make a commitment  
13 to you now until the business closes and we see what the net  
14 proceeds are; and then, yeah, we'd like to pay employees  
15 some severance. And that's consistent. The deposition was  
16 consistent of the Potashniks from the beginning, over and  
17 over and over again.

18 What you will hear from Mr. Carpenter is  
19 something about a meeting that only he remembers that  
20 happened on October 13th, 2006, where he remembers a  
21 formula. I've narrowed it down. I heard testimony.

22 You'll hear the evidence from the witness  
23 stand that Mr. Carpenter didn't plead for what he sued in  
24 this lawsuit 10 years ago. That's right, this lawsuit's  
25 been pending for 10 years, since March 11th, 2008.

1 Mr. Carpenter has held this lawsuit over the Potashniks'  
2 head for 10 years hoping, waiting, and leveraging for  
3 settlement. But it hasn't come because the Potashniks never  
4 made a deal with him. They weren't going to pay him for  
5 some promise that they didn't make, and that's why we're  
6 here 10 years later.

7 Mr. Carpenter's made up this story and it's  
8 not even believable. The evidence that we'll present to you  
9 will show you it's a fabricated story and there was no  
10 agreement beyond the written employment contract for any  
11 additional compensation.

12 Pay to stay, another term that was used in  
13 the Affordable Housing business -- stay to pay or whatever  
14 it was -- are not terms that were commonly used. They  
15 weren't used by Mr. and Mrs. Potashnik. That's something  
16 that was made up as a catchy phrase in this lawsuit.

17 Let me have the employment contract, if you  
18 don't mind.

19 The only written agreement that was made by  
20 Mr. Carpenter -- the only agreement that was made by  
21 Mr. Carpenter was with his employer, Southwest  
22 Management -- Southwest Housing Management Corporation.

23 Now, lest you think that the Potashniks are  
24 some big conglomerate or inherited their money or something  
25 like that, the truth of the matter is that Brian Potashnik

1 started this company in 1993, by myself, with no money and  
2 no employees. A year later he hired Cheryl Potashnik.

3 But in 1994 -- just hold that there -- but  
4 in 1994 they acquired a rundown property in Carrollton,  
5 Texas. It was already an Affordable Housing project. It  
6 wasn't being used to its potential. It had been seriously  
7 run down. Brian and Cheryl Potashnik bought that  
8 property -- or Brian bought the property -- and Brian and  
9 Cheryl renovated it. And that's how they got into the  
10 Affordable Housing business with one single property.

11 Since 1994, they acquired one property at a  
12 time, one or two properties a year, up until about the year  
13 2000, 2001, when they really got to know their business and  
14 their business took off. From 2001 to 2008, when they sold  
15 their business -- and these dates are all wrong. I'm going  
16 to hold Ms. Gibson and Mr. Carpenter to these dates. To  
17 2008, when they sold their business, they built -- they  
18 built hard, blood, sweat, and tears, hard labor -- they  
19 built a company with some 60 properties and I think it's  
20 about 12,000 apartment units. They built them.

21 They got to a point when they needed more  
22 expertise than the two of them had. And as they grew  
23 they -- they acquired more property managers and more  
24 people. And at some point in 2004 they hired Mr. Carpenter.

25 Now, Mr. Carpenter is not a babe in the



1 woods. Mr. Carpenter had serious experience in property  
2 management. Mr. Carpenter owned his own company, he had  
3 been executive vice president at the other housing  
4 management companies, and he knew the business and he  
5 represented himself to know the property management  
6 business, which he did. Mr. Carpenter's an excellent  
7 property manager and did a good job for the Potashniks. It  
8 wasn't perfect, it wasn't perfect, but he did good.

9 And you will see -- go back to the slide,  
10 if you don't mind -- when we show you the employment  
11 contract that in the employment contract -- can you blow up  
12 the duties -- you will see that Mr. Carpenter agreed and  
13 that his testimony will be that he read that contract before  
14 he signed it, he understood it before he signed it, and he  
15 intended to comply with each and every provision in the  
16 contract when he signed it. So there's no wiggle room here  
17 for Mr. Carpenter, and he agreed to perform the duties and  
18 functions assigned to him by Mr. Potashnik.

19 Now, with regard to the Southwest  
20 companies, there was Southwest Development. The development  
21 would find the properties, get it ready for construction.  
22 There was Affordable Housing Construction. That was a  
23 construction company that would come in and build the  
24 apartment complexes. And then there was Southwest  
25 Management, which is the company that Mr. Carpenter worked

1 for.

2 Southwest Housing Management would manage  
3 the properties. That was a big job. So now they have a lot  
4 of employees. You'll hear from Mr. Potashnik or  
5 Mrs. Potashnik about the number of employees in that  
6 company.

7 So, when they hired Mr. Carpenter, he  
8 signed this contract. And 3(a) says he takes his  
9 instructions, the job duties comes from the company, he  
10 reported to Mr. Potashnik.

11 Let me go to the next paragraph, quote two,  
12 two, Paragraph 2. Can you do that for me?

13 Paragraph 2, Mr. Carpenter agreed that he  
14 was an at-will employee, and he continued to be an at-will  
15 employee for his entire employment with the company. That  
16 means he could be hired, he could be fired at any time; but,  
17 likewise, he could leave at any time. And every day that he  
18 worked for Southwest Housing Management he was an at-will  
19 employee that could be hired and fired at any time.

20 Let's go to compensation, number four.  
21 Now, for the executive position that he had he was paid  
22 \$200,000, \$200,000 a year, which was an executive salary and  
23 a lot of money. It's not only a lot of money because it's a  
24 lot of money, it's a lot of money because in the Southwest  
25 Housing business they were paying for expertise that

1 Mr. Carpenter had.

2 Let's move forward on the contract.

3 Paragraph 4A is the \$200,000 salary and Paragraph 4B talks  
4 about any bonus he would get with regard to his employment  
5 at Southwest Housing Management, the only employer he ever  
6 had during the three-and-a-half years he worked for the  
7 Southwest Management, the only contract he ever signed. And  
8 I think he got one check from Affordable Housing which was  
9 trued up at the end of the year by accounting. But other  
10 than that, every check he got in three-and-a-half years was  
11 from Southwest Housing Management.

12 But in it -- and I'll show you the full  
13 paragraph on every document that we present to you, not just  
14 one line at a time -- but the full paragraph not only  
15 addresses Mr. Carpenter's bonus in his first year of  
16 \$50,000, which he received, but it also talks about bonus --  
17 bonuses in future years, which could be changed at the sole  
18 discretion of the company.

19 And you-all know what sole discretion  
20 means; that it's up to the employer to decide at the end of  
21 every year whether Mr. Carpenter got a bonus. And it says  
22 it will determine on the basis of overall profitability of  
23 the organization as a whole. And as you heard from  
24 Ms. Gibson, the organization as a whole, particularly  
25 Southwest Management, was abusing money.

1 Now, we're going to show you evidence  
2 that -- notwithstanding what Ms. Gibson just told you --  
3 that Ms. Potashnik's position all the time was that they  
4 couldn't make a commitment to Mr. Carpenter. They'd like  
5 to. They'd like to give him -- give him severance, but they  
6 couldn't (unintelligible). Same thing with Mr. Potashnik.

7 And I'm glad she brought up these  
8 tape-recorded conversations, because the day of his last day  
9 at the company Mr. Carpenter secret -- secretly recorded two  
10 conversations: One with Mr. Potashnik on the telephone and  
11 the other one in person with Mrs. Potashnik.

12 And during those conversations -- I counted  
13 it up and I think there was some -- about eighty times in  
14 the two conversations when he had an opportunity to speak.  
15 Eighty times he had an opportunity to say to the Potashniks,  
16 What about that deal you promised me? What about that deal  
17 for an extra stay-to-pay bonus and three percent or two  
18 percent of -- of the sales proceeds, less the brokerage fees  
19 and less the closing costs, and that you promised to pay me  
20 at close? Eighty times he had an opportunity -- over eighty  
21 times he had an opportunity to say that on tape when he knew  
22 he was the only one recording the conversation, and eighty  
23 times he didn't take the opportunity to nail down  
24 Mrs. Potashnik or Mr. Potashnik on that tape recording.

25 Now, why was he tape recording the

1 conversation? He'll have to explain that again to you.

2 What was the purpose of that recording? He  
3 wanted to get evidence of his deal, which he didn't believe  
4 he had up until the day he left the company. And he didn't  
5 get it on the phone because he knew he didn't have a deal.

6 Now, when he left the company -- go to the  
7 termination provision, please -- you'll see evidence that  
8 when he left the company -- go up a little bit, please.  
9 Termination. Next, please. There you go.

10 So you'll see evidence that when he left  
11 the company, notwithstanding it says the employee will not  
12 be entitled to any compensation or benefits pursuant to this  
13 agreement, effective upon termination of employee's  
14 employment, but then it says in the event company terminates  
15 employee, employee will receive severance in an amount equal  
16 to six weeks' base salary in a lump sum payable upon such  
17 termination. Southwest Housing Management, through the  
18 Potashniks, handed him a severance agreement on the day he  
19 was -- his last day.

20 The severance agreement included a check  
21 for six weeks' base salary and severance of \$150,000, and  
22 severance of \$150,000 which was in their discretion. And  
23 Mr. Carpenter turned it down. He said, no, I'm not doing  
24 it. I'm entitled to a bonus from the proceeds of the sale.

25 Now, remember the Potashniks had spent 16

1 years building this business. They put money into it, they  
2 signed personal guaranties, they sacrificed themselves and  
3 their family. They divorced in 2014, maybe as a result of  
4 some of these pressures. They're still friends and they  
5 still raise their two college-age boys together. They may  
6 not be friends with me when this is over with, but they're  
7 still friends with each other.

8 But they offered Mr. Carpenter over  
9 \$150,000 as severance and he said, no, he wasn't going to  
10 take it. So why wasn't he going to take it? Well, in the  
11 course of the last 10 years we uncovered some personal notes  
12 that Mr. Carpenter had written to himself.

13 Do we have those notes on there,  
14 Steve?

15 And in those personal notes, which we'll  
16 offer into evidence, you will see that --

17 MS. GIBSON: Your Honor, I'm going to  
18 object to showing exhibits --

19 THE COURT: You can't show a document --

20 MS. GIBSON: -- that haven't been  
21 pre-admitted.

22 THE COURT: -- unless it's already been  
23 admitted into evidence.

24 MR. L. FRIEDMAN: Oh, okay.

25 In the document that's entitled

1 Mr. Carpenter's personal notes, which is dated March 14th,  
2 2007, Mr. Carpenter writing by himself that he was by  
3 himself, ostensibly for no other purpose than keeping notes,  
4 writes that the \$200,000-a-year salary wasn't enough for  
5 him; that his budget, his living budget, was 300- to 350,000  
6 and he couldn't make ends meet. He needed money. He needed  
7 more money.

8 He had a tax lien on his house. He had  
9 sued his former employer when he left and he was paying  
10 lawyers in that lawsuit, and he had a bunch of expenses at  
11 home that he couldn't cover. So you'll ask yourself what's  
12 the motivation for this lawsuit. The motivation for this  
13 lawsuit is Mr. Carpenter wants more money and Mr. Carpenter  
14 wants money that he didn't earn. A hundred fifty thousand  
15 dollars is a good severance for somebody who had worked  
16 there three-and-a-half years.

17 Now, we'll show you evidence that  
18 Mr. Carpenter never -- not only never reached an agreement  
19 with Mr. Potashnik, over the last 10 years he changed what  
20 he stated was his original agreement. The agreement he put  
21 first in his original petition is different than the  
22 agreement he stated later on in sworn pleadings, different  
23 than the agreement he set forth in a declaration, and  
24 different than the agreement he stated later on. We'll show  
25 you that over the years Mr. Carpenter couldn't even keep his

1 deals straight.

2 In addition, we'll show you that all during  
3 this period of time Mr. Carpenter sought the written  
4 agreement that he knew -- go to Paragraph 12, please -- that  
5 he knew he had to have in order to make it binding and  
6 enforceable, because Paragraph 12 of his written employment  
7 contract with Southwest Management Company -- Southwest  
8 Manage -- Southwest Housing Management required him. No  
9 amendment or alteration of the terms of this agreement shall  
10 be valid unless made in writing and signed by both parties  
11 to this agreement.

12 And you'll have to ask yourself -- this  
13 will show you so much evidence that Mr. Carpenter continued  
14 to try to get Brian or Cheryl Potashnik to sign in writing.  
15 He wrote an amendment to this contract himself and handed it  
16 to them with an agreement he wanted, which he now claims was  
17 an oral agreement. You have to ask yourself, Why did he  
18 want a written agreement if he had a valid, enforceable,  
19 oral agreement? And why did he draft an amendment to that  
20 contract if this so-called oral agreement had nothing to do  
21 with that contract?

22 So Mr. Carpenter's own conduct over the  
23 period of time isn't consistent with someone who claims that  
24 on October 13th, 2006, they had a valid, binding, and  
25 enforceable agreement.



1 Now, with regard to the statute of  
2 limitations' -- cause we anticipate that you will be asked a  
3 statute-of-limitations question -- according to  
4 Mr. Carpenter, he made his deal with Brian Potashnik on  
5 October 13th, 2006. And when asked about it, he will  
6 testify that that agreement had a beginning and had an end.  
7 And he testified the beginning was October 13th, 2006, and  
8 he testified that the end was October 31, 2007, and his last  
9 day of employment was -- I think he was terminated on  
10 November 1st and then his last day of employment was  
11 November 2nd.

12 That agreement, if it was made -- which we  
13 say it wasn't made, but if the agreement that Mr. Carpenter  
14 has concocted to get us here today is what he says it was,  
15 it was performable in over a year and prohibited by the  
16 statute of frauds under the laws of the State of Texas. So  
17 it couldn't have been performed.

18 So, ladies and gentlemen, we're going to  
19 ask you to listen carefully to the evidence because we  
20 believe that the plaintiffs will try to distract you and  
21 talk about safety rules or what other employees were doing  
22 or this or that. But the only issue in this case -- and  
23 we'll present evidence directly on point -- the only issue  
24 in this case is did Mr. Carpenter make an agreement with  
25 Mr. Potashnik. If so, what were the terms of the agreement?

1 Did Mr. Potashnik ever agree to it? And we think the  
2 evidence will show it just never happened. It never  
3 happened and it can't be enforceable.

4 And when you get to know Mr. Potashnik a  
5 little bit, nobody who built that business over 15 or 16  
6 years would make an agreement to give an employee that  
7 worked there for three years a million-dollar bonus on a  
8 handshake on a verbal agreement. If he had made that  
9 agreement, which he didn't, it would have been in writing,  
10 and it wasn't.

11 So, thank you for your time and attention.  
12 I know this has been a long day, and we'll be presenting  
13 evidence to you.

14 THE COURT: All right. Thank you,  
15 Mr. Friedman and Ms. Gibson.

16 Members of the jury, that concludes the  
17 opening statements. The next phase of trial is the  
18 evidentiary phase of trial where witnesses are called to the  
19 witness stand and testimony is presented to you under oath.  
20 Before we do that, we'll take a 10-minute break.

21 At the end of the day I'll give you some  
22 instructions that will govern your entire course of the  
23 trial. But the instruction I'll give you right now is that  
24 if you want to call home and tell people that you're serving  
25 on the jury, you can do that if you have a mobile phone.

1 But all you can do right now is tell them that you're on the  
2 jury and you may go as late as 5:30 today. We'll see how it  
3 goes.

4 But we'll see you back in 10 minutes. This  
5 is the jury room here. Rick will show you where that is and  
6 we'll see you back in 10 minutes.

7 (The jury exited the courtroom.)

8 THE COURT: Mr. Friedman, your attention,  
9 please.

10 Ms. Gibson, just to clarify it, all this I  
11 know was clear on the record about other employees' bonuses.  
12 You can say there's a program but you can't compare and  
13 contrast other employees. You can't say what other  
14 structure was for another employee or whether they got  
15 theirs or not because then we're trying a case within a case  
16 and showing why this one's different.

17 If there's a program you can do, you can't  
18 say other people got it or what other people's situation  
19 was.

20 MS. GIBSON: Your Honor, clarification, the  
21 other people who got paid, that came off of -- that's part  
22 of his damages formula.

23 THE COURT: Well, I'll look at that. We're  
24 not trying a case within a case is what I'm saying. You  
25 can't compare and contrast, if that's what you're doing.

1 it's already 4:00 o'clock.

2 (Off the record)

3 MR. HALE: Yes, Your Honor. If we don't  
4 already have one, can I have a running objection to the  
5 motions -- or excuse me -- for the reason stated in our  
6 motion in limine regarding the criminal investigation  
7 saying that it's not relevant to whether there was a  
8 formation of a contract?

9 THE COURT: You can have a running  
10 objection on that from the beginning, on up and through the  
11 trial. So I've already granted a running objection. But if  
12 I didn't, I'm granting it now retroactive to the beginning  
13 of trial.

14 MR. HALE: Thank you, Your Honor.

15 MR. L. FRIEDMAN: Thank you, Your Honor.

16 (The jury entered the courtroom.)

17 THE COURT: All right. Welcome back and  
18 good afternoon, members of the jury.

19 We're going to start the evidentiary phase  
20 of the trial where witnesses are called to the witness stand  
21 and testimony is presented to you under oath. All this, the  
22 beginning of the trial -- and we like to start things off  
23 smoothly -- we're going to take this a little bit out of  
24 order.

25 The first witness that the -- the

1 plaintiffs call witnesses in the first instance. The first  
2 witness they call, we're going to go with her for about 30  
3 minutes. Then we're going to stop her testimony and call  
4 another witness because that witness is not available  
5 tomorrow. He's out of the country, so we want to make sure  
6 we get his testimony today. So we're going to have one  
7 witness for about 30 minutes, then another witness. And  
8 when you come back tomorrow we'll finish up that first  
9 witness.

10 So, Ms. Gibson, it's your witness, I'm  
11 taking it. If you'd call your first witness.

12 MS. GIBSON: Your Honor, plaintiffs call  
13 Cheryl Geiser.

14 THE COURT: Ms. Geiser, if you'd come up  
15 here, ma'am.

16 And before you step up on those steps I'm  
17 going to swear you in.

18 (Witness sworn)

19 THE COURT: Have a seat here right in front  
20 of you. Ms. Gibson will ask you questions first.

21 If you don't hear a question or a response,  
22 let us know and we'll ask the attorney to repeat the  
23 question or the witness to repeat the response.

24 Ms. Gibson.  
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CHERYL GEISER,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. GIBSON:

Q. Please tell us your full name.

A. Cheryl Lorraine Geiser.

Q. Your maiden name is Geiser?

A. Yes.

Q. Okay. And you were formerly known as  
Cheryl Potashnik?

A. Yes, in certain circumstances.

Q. Okay.

You've never actually changed your last  
name to Potashnik but you used that last name while you were  
married to Brian Potashnik --

A. Correct.

Q. -- correct?

MR. L. FRIEDMAN: Your Honor, can I just  
ask the witness to pull the microphone up --

THE COURT: Yeah.

MR. L. FRIEDMAN: -- closer to her?

THE COURT: Just pull it to you there.

THE WITNESS: Like that?

MR. L. FRIEDMAN: You can pull it. Yeah,  
good. Thank you.

1 Q. (By Ms. Gibson) And you generally use the last  
2 name Potashnik just for business purposes?

3 A. Yes.

4 Q. Can you explain to the jury what at-will  
5 employment is?

6 A. My understanding of at-will employment in Texas is  
7 that an employer or employee can hire and fire at will -- or  
8 an employer can hire and fire at will; an employee could stay  
9 on their job or leave at will.

10 Q. Okay.

11 So, Jeff Carpenter did not have to stay as  
12 long as needed to help make the asset sale happen, correct?

13 A. I don't understand the question.

14 Q. What part of it are you having trouble with and  
15 I'll work with you?

16 MR. L. FRIEDMAN: Objection, argumentative.

17 THE COURT: Overruled.

18 MS. GIBSON: I'm just --

19 THE WITNESS: Can you ask me again,  
20 please?

21 MS. GIBSON: Sure.

22 Q. (By Ms. Gibson) Jeff Carpenter did not have to  
23 stay on as long as needed to help make the asset sale  
24 happen --

25 MR. L. FRIEDMAN: Objection.

1 Q. (By Ms. Gibson) -- correct?

2 MR. L. FRIEDMAN: It assumes facts not in  
3 evidence.

4 THE COURT: Overruled.

5 A. Jeff Carpenter did not have to stay employed with  
6 the company. Correct.

7 Q. (By Ms. Gibson) Okay. But Jeff Carpenter did  
8 stay, correct?

9 A. Jeff Carpenter stayed employed with the company  
10 until he left the company, yes.

11 Q. And he stayed all the way through the transition  
12 to the purchaser's management company taking over  
13 management?

14 A. Yes.

15 Q. Okay.

16 And I made a mistake in opening. Someone  
17 tried to correct me, but I want to talk to you about some  
18 dates. So I got those two wrong.

19 In -- can you see this, Ms. Geiser?

20 A. Yes.

21 Q. Okay.

22 MS. GIBSON: And can every -- Mr. Friedman,  
23 can everyone see?

24 Q. (By Ms. Gibson) In October of 2006, when did  
25 you-all contemplate that the asset sale was going to go



1 through?

2 MR. L. FRIEDMAN: Wait, wait.

3 I'm going to object to her marking that  
4 exhibit because she's now assuming facts not in evidence.

5 Well, what's happening?

6 THE COURT: It's not an exhibit. It's a  
7 demonstrative.

8 MS. GIBSON: Right.

9 THE COURT: It's not been admitted in  
10 evidence.

11 MR. L. FRIEDMAN: Okay.

12 THE COURT: And we probably won't be  
13 admitting demonstratives.

14 Q. (By Ms. Gibson) In October of 2006 the asset sale  
15 was anticipated to happen in spring of 2007 or summer of  
16 2007, correct?

17 A. I'm sorry. I have to think about this. Oh, let  
18 me think. In October of '06 -- I'm just not having a good  
19 memory on the dates of when the purchase and sale agreement  
20 was signed.

21 Q. The -- do you recall originally, regardless of  
22 October 6, that originally the closing was anticipated to  
23 happen in spring or summer of 2007?

24 A. I do remember that the -- the length of time that  
25 the sale was anticipated to take was shorter than how it

1 actually turned out.

2 Q. Okay.

3 And the management transition date -- and  
4 I -- I accidentally wrote down the wrong year, meaning  
5 '07 -- the management transition date was November 1, 2007,  
6 correct?

7 A. Somewhere thereabouts, yes.

8 Q. Okay. And so, at the end -- as of the end of the  
9 day on October 31st, 2007, you-all no longer needed  
10 Jeff Carpenter, correct?

11 A. And that was the last day of his employment.  
12 Correct.

13 Q. Okay. And you no longer needed him as of then  
14 because of the transition to new management?

15 A. Correct.

16 Q. Okay.

17 Ms. Geiser, is it fair to say that you  
18 intended to pay Jeff Carpenter an asset-sale-proceeds bonus?

19 A. I intended, if there was money left at the end of  
20 the sale, that some amount would be paid.

21 Q. Okay.

22 Do you recall giving your deposition in  
23 this case, Ms. Geiser?

24 A. Yes.

25 Q. Okay. And you recall that I was there?

1 A. Yes.

2 Q. And do you recall that at your deposition, when I  
3 asked you --

4 MR. L. FRIEDMAN: Line and page?

5 MS. GIBSON: 84, 15-18.

6 MR. L. FRIEDMAN: Excuse me.

7 Q. (By Ms. Gibson) When I asked you that question at  
8 deposition, "So, is it fair to say that you intended to pay  
9 Jeff Carpenter a sales-proceeds bonus," you answered, "Yes"?

10 A. Yes.

11 Q. And you wanted Jeff Carpenter to stay on working  
12 through a certain point in connection with the asset sale?

13 A. Yes.

14 Q. And that point was the point in which management  
15 transitioned to Pinnacle, which was the management arm of  
16 the purchaser in the asset sale?

17 A. That management transition was not originally  
18 contemplated in the purchase and sale agreement, so that was  
19 a conflict that came up later in time, as I remember.

20 Q. Okay. But, ultimately, you wanted Jeff Carpenter  
21 to stay on working through a certain point in the asset  
22 sale, correct?

23 A. Yes.

24 Q. And that point, ultimately, was the point in which  
25 management transitioned to Pinnacle, correct?

1 A. Yeah. That's fair.

2 Q. Okay. And Pinnacle was the shorthand name for the  
3 management arm of the purchaser, correct?

4 A. I don't recall if Pinnacle was the management arm  
5 of the purchaser, but it was the management company that the  
6 purchaser had designated that would take over the management  
7 of the portfolio that they were purchasing.

8 Q. Okay.

9 And Jeff Carpenter stayed on until  
10 management was transitioned to Pinnacle --

11 A. Correct.

12 Q. -- correct?

13 And once Jeff Carpenter had done that,  
14 y'all did not need him to stay on anymore, correct?

15 A. Correct.

16 Q. The gist of the management transfer agreement was  
17 that the seller's management services concerning the  
18 Affordable Housing properties was being transferred to the  
19 purchaser's management team?

20 A. Say that again, please.

21 Q. Sure. The gist of that agreement on the  
22 management transfer --

23 A. Uh-huh.

24 Q. -- of November 1, 2007 --

25 A. Uh-huh.

1 Q. -- was that the seller's management services  
2 concerning the Affordable Housing properties was being  
3 transferred to the purchaser's management team, correct?

4 A. Yes.

5 Q. In other words, Pinnacle took over management of  
6 the apartment complexes from Southwest Housing Management at  
7 that point?

8 A. Yes.

9 Q. You wanted Jeff Carpenter to stay on until that  
10 point for purposes of continuity, to continue his role in  
11 managing properties and providing you and Brian Potashnik  
12 with that continuity, correct?

13 A. The continuity was provided to the company,  
14 Southwest Housing Management, and to the portfolio of the  
15 property. I would not say that it was to Brian and I  
16 personally.

17 Q. Okay.

18 MR. L. FRIEDMAN: Can I just get that  
19 microphone closer to the witness, please?

20 Q. (By Ms. Gibson) Ms. Geiser, is that how you spoke  
21 to Jeff Carpenter when he -- when he worked with you? Did  
22 you specifically delineate between saying we, Brian and I,  
23 or saying Southwest Housing Development Company requests  
24 that you -- or Southwest Housing Management requests that  
25 you stay on?

1 A. I think it depended on the circumstance.

2 Q. What circumstance does it depend on?

3 A. I can't sit here today and say what circumstances  
4 it depended on.

5 Q. So, is it your testimony then that you-all spoke  
6 more formally than just saying "we", we would like you to  
7 stay on?

8 A. Probably in that context I would have been saying  
9 we --

10 MR. L. FRIEDMAN: Objection, calls for  
11 speculation.

12 THE COURT: Overruled.

13 A. -- we in the context of speaking on behalf of the  
14 company. So, yes, I said we, but it was we in the context  
15 of his employment with Southwest Housing Management.

16 Q. (By Ms. Gibson) Okay.

17 And do you recall -- you recall your  
18 deposition, correct?

19 A. Uh-huh.

20 Q. And I was there --

21 A. Yes.

22 Q. -- right?

23 And when I asked you the question -- this  
24 is 54, 9-10.

25 MR. L. FRIEDMAN: Line and page, please?

1 THE COURT: She just said it.

2 MS. GIBSON: 54, 9-10.

3 MR. L. FRIEDMAN: I need a chance to look  
4 at it before she publishes it.

5 THE COURT: Okay.

6 Q. (By Ms. Gibson) I asked you, "Why did you want  
7 Jeff Carpenter to stay on until that transfer of management  
8 to the purchaser," and you said, "For continuity."

9 A. Correct.

10 Q. All right. You didn't make distinctions at that  
11 time between different entities or different companies,  
12 correct?

13 A. I don't know that it was the same question. I can  
14 look at it again.

15 MS. GIBSON: I don't remember what I just  
16 said. Can you read it back?

17 THE COURT: No.

18 MS. GIBSON: Okay, okay.

19 Q. (By Ms. Gibson) I believe what I had said is, at  
20 the -- when you answered the question in deposition, you  
21 weren't making fine distinctions between different corporate  
22 entities, correct, in connection with that question?

23 MR. L. FRIEDMAN: Improper impeachment.

24 THE COURT: Overruled.

25 THE WITNESS: Can I see the question again?

1 MS. GIBSON: Sure.

2 The question is --

3 THE WITNESS: The question that you asked  
4 me at deposition?

5 MS. GIBSON: Sure.

6 Q. (By Ms. Gibson) So the question that I had asked  
7 you is, "Why did you want Jeff Carpenter to stay on until  
8 that transfer of management to the purchaser," and you said,  
9 "For continuity."

10 A. Can I see the part above that?

11 Q. Sure.

12 MR. L. FRIEDMAN: Optional completeness,  
13 Your Honor?

14 THE COURT: She's not through yet, and it's  
15 her witness right now.

16 Q. (By Ms. Gibson) Okay. So, can you see there what  
17 is above? What's right above that is, But the gist of the  
18 agreement was that seller's management services  
19 concerning --

20 MR. L. FRIEDMAN: There's no question to  
21 impeach her on.

22 THE COURT: She just asked her --

23 MS. GIBSON: She asked me a question. I  
24 think I'm entitled to try and answer.

25 THE COURT: Objection's overruled. Go



1 ahead.

2 Q. (By Ms. Gibson) -- concerning these Affordable  
3 Housing properties was being transferred to the purchaser's  
4 management team.

5 A. Yes.

6 Q. Why did you want Jeff Carpenter -- and you said  
7 some more there. Pinnacle took over managing the properties  
8 that Southwest Housing Management was managing up till that  
9 point. Why did you want Jeff Carpenter to stay on until  
10 that transfer of management to the purchaser? And you said  
11 for continuity.

12 A. Correct.

13 Q. Okay. And then you --

14 A. But I qualified --

15 MR. L. FRIEDMAN: And I'd like to read --

16 Q. (By Ms. Gibson) And then you explained --

17 MR. L. FRIEDMAN: -- the optional  
18 completeness down to Line 22.

19 THE COURT: Let her finish.

20 MS. GIBSON: Okay.

21 Q. (By Ms. Gibson) And so there you are not  
22 distinguishing between various --

23 A. Well, you mentioned --

24 Q. -- different entities --

25 A. -- Southwest Housing Managing [sic] prior in that

1 question, and I was speaking as it related to Southwest  
2 Housing Management.

3 Q. Ms. Geiser, my --

4 MR. L. FRIEDMAN: Optional completeness.  
5 It's right there in the deposition.

6 Q. (By Ms. Gibson) -- my original question included  
7 the rest of that.

8 THE COURT: Excuse me.

9 MS. GIBSON: Yes.

10 THE COURT: There's an objection.

11 You can do optional completeness in your  
12 own examination of her. She asked that part to be read that  
13 she just read.

14 MR. L. FRIEDMAN: Thank you.

15 MS. GIBSON: Okay.

16 Q. (By Ms. Gibson) And you also said that you wanted  
17 Jeff Carpenter to stay on until that point to continue his  
18 role in managing properties and providing you and  
19 Brian Potashnik with that continuity, correct?

20 A. The company was provide -- the continuity was  
21 provided to the company.

22 Q. And -- okay.

23 You said the continuity was only provided  
24 to whom?

25 A. To the company.

1 Q. Okay.

2 And you -- you obviously recall being at  
3 your deposition?

4 A. Yes.

5 Q. Okay.

6 And so, what I had asked you is that you  
7 also said you wanted Jeff Carpenter to continue in his role  
8 in managing properties and providing you and Brian Potashnik  
9 with that continuity. And you said it was only the  
10 Southwest Housing Management Corporation?

11 A. As I sit here today, the continuity that was being  
12 provided was to the company, Jeff's role as the executive  
13 vice president of the management team.

14 Q. Okay.

15 At your deposition -- this is 54, 14-18 --  
16 you had said for continuity. And I asked, Any other reason?  
17 You say, We wanted Jeff to continue.

18 A. Providing the management company with --

19 MR. L. FRIEDMAN: Excuse me. I do object  
20 because, first of all, it's improper impeachment. Second of  
21 all, this wasn't the question she asked.

22 THE COURT: Okay. This is what she just  
23 wanted to read to the jury --

24 MR. L. FRIEDMAN: It was, but it wasn't  
25 prefaced with an improper question, and this is not

1 inconsistent with this witness's just before testimony.

2 THE COURT: Okay.

3 MS. GIBSON: Your Honor, I --

4 THE COURT: Stop, stop, stop.

5 MS. GIBSON: Sorry.

6 THE COURT: Objection's overruled. Go  
7 ahead.

8 MS. GIBSON: Okay.

9 Q. (By Ms. Gibson) And you said, We wanted Jeff to  
10 continue. Do you see above the highlighted line?

11 A. Uh-huh.

12 Q. Who are you referring to when you say we?

13 A. Providing the management company with that  
14 continuity.

15 Q. Well, you say we wanted Jeff to continue. Who is  
16 we?

17 A. We is Brian and Cheryl.

18 Q. Okay.

19 And you also said to continue his role as  
20 executive vice president with the management company, to  
21 continue managing the properties, and providing us with that  
22 continuity.

23 A. And I qualify that and I say providing the  
24 management company with that continuity.

25 Q. Okay. Well, who are you referring to by "us". Is

1 that you and Brian again?

2 A. Yes.

3 Q. Okay.

4 And at the time of these events you  
5 believed that that type of continuity was important to the  
6 asset sale, correct?

7 A. Yes.

8 Q. And, of course, not just with Jeff Carpenter, but  
9 with other key employees as well?

10 A. Yes.

11 Q. In the time leading up to the asset sale you  
12 learned at some point that Jeff Carpenter was not likely to  
13 have a job with the purchaser after the asset sale?

14 A. Correct.

15 Q. And Jeff Carpenter was not likely to have a job  
16 with the purchaser after the asset sale because the  
17 purchaser's management company already had someone in  
18 Jeff Carpenter's -- in Jeff Carpenter's equivalent position,  
19 correct?

20 A. Whether it was a similar position or equivalent,  
21 yes, that's correct.

22 Q. Jeff Carpenter's employment ended because  
23 Jeff Carpenter was no longer needed after y'all transitioned  
24 property management, correct?

25 A. Yes.

1 Q. With the management transition on November 1,  
2 2007, Jeff Carpenter had done all that was asked of him, as  
3 far as staying on, by the end of the day on October 31,  
4 2007, correct?

5 A. Yes.

6 Q. You believe your word is important to you?

7 A. Yes.

8 Q. You think it's important to honor your word?

9 A. Yes.

10 Q. Do you concede that businesses must live up to  
11 their agreements with those who have lived up to theirs?

12 MR. L. FRIEDMAN: Argumentative,  
13 Your Honor.

14 THE COURT: Overruled.

15 A. I believe that businesses enter into agreements;  
16 the terms of which both parties agreed to.

17 Q. (By Ms. Gibson) Do you concede that businesses  
18 must live up to their agreements with those who have lived  
19 up to their end of the bargain?

20 MR. L. FRIEDMAN: Asked and answered.

21 A. I believe that businesses enter into agreements  
22 where both parties agree to the terms and conditions of the  
23 agreement.

24 Q. (By Ms. Gibson) Ms. Geiser, one more time.

25 THE COURT: You've asked it twice. You've

1 got to move on.

2 MS. GIBSON: Okay.

3 Q. (By Ms. Gibson) Do you concede that those who  
4 operate businesses in Texas must honor Texas law about  
5 enforcement of oral agreements?

6 MR. L. FRIEDMAN: Calls for legal  
7 conclusion, lack of foundation.

8 THE COURT: Overruled.

9 THE WITNESS: Can you ask me that question  
10 again?

11 MS. GIBSON: Sure.

12 Q. (By Ms. Gibson) Do you concede that those who  
13 operate businesses in Texas must honor Texas law about  
14 enforcement of oral agreements?

15 MR. L. FRIEDMAN: Argumentative.

16 THE COURT: Overruled.

17 A. I'm not a lawyer, but I would answer yes.

18 Q. (By Ms. Gibson) At one point you were an employee  
19 of SH Management, correct?

20 A. I was an employee of Southwest Housing Management.

21 Q. Okay. I'm sorry. That's my abbreviation.

22 Southwest Housing Management, correct?

23 A. Yes.

24 Q. Okay. And you did not have a written employment  
25 agreement at the time, correct?

1           A.    From the time I started in 1994, no, I did not  
2    have a written employment agreement.

3           Q.    Okay. And you expected that your agreements would  
4    be honored, even if not in writing?

5           A.    I don't know what you mean by that question.

6           Q.    Did you expect that your oral agreements would be  
7    honored even though you did not have a written employment  
8    agreement?

9           A.    I don't know what you mean by oral agreement.

10          Q.    For pay. For pay.

11          A.    I don't believe a salary negotiation or a salary  
12    relationship, a payroll relationship between an employer and  
13    employee, is a oral agreement.

14          Q.    Have you ever had an oral agreement for pay?

15          A.    I don't know what that means, an oral agreement  
16    for pay.

17          Q.    In salary? You don't know what an oral agreement  
18    is?

19          A.    For pay.

20          Q.    For pay?

21          A.    Yeah.

22          Q.    All right.

23                   Have you --

24          A.    I had many jobs where I haven't had a written  
25    agreement and -- yes.



1 Q. Okay. And was it your expectation that the  
2 employers would honor your agreement even though it wasn't  
3 in writing?

4 A. I believe that employers have to honor their  
5 payroll obligations to their employees, yes.

6 Q. You say payroll obligations. Are you  
7 distinguishing that from oral agreements for bonuses?

8 A. I believe that if there is an agreement both  
9 parties agree to the terms of the agreement and they're  
10 obligated to comply with it.

11 Q. Okay.

12 So, you have testified that you intended to  
13 pay Jeff Carpenter an annual asset-sale-proceeds bonus.

14 MR. L. FRIEDMAN: Objection, misstates  
15 witness's testimony, assumes facts not in evidence.

16 THE COURT: If you don't agree, tell her  
17 you don't agree with what she said.

18 THE WITNESS: Yes, I don't agree with the  
19 way you characterized that.

20 MS. GIBSON: Well, earlier when I said, Is  
21 it fair to say you intended to pay Jeff Carpenter an  
22 asset-sale-proceeds bonus, I believe you said yes.

23 MR. L. FRIEDMAN: It misstates the  
24 witness's prior testimony and assumes facts not in evidence.

25 THE WITNESS: The intention would have been

1 to pay Jeff an amount out of the proceeds from the sale.  
2 That term asset-sale-e-proceed bonus is a term that I feel  
3 I like you've adopted, but that's not a term that I'm  
4 comfortable with.

5 Q. (By Ms. Gibson) Okay, what term are you  
6 comfortable with?

7 A. A bonus out of the proceeds of the sale.

8 Q. Okay. Instead of asset-sale-e-proceeds bonus, you  
9 want me to say bonus out of what?

10 A. The proceeds of the sale.

11 Q. Out of proceeds of sale. Okay.

12 So you intended to pay Jeff Carpenter a  
13 bonus out of proceeds of the sale, correct?

14 A. Yes.

15 Q. And the point of this bonus was you wanted  
16 Jeff Carpenter to stay on working, correct?

17 A. No.

18 Q. No?

19 A. No.

20 Q. You did not want Jeff Carpenter to stay on working  
21 to a certain point in connection with the asset sale?

22 A. No, I did.

23 Q. Okay. So you wanted Jeff to stay on working and  
24 Jeff stayed?

25 A. Yes.

1 Q. Okay. And he stayed as long as needed?

2 A. He stayed as long as we paid his salary and until  
3 we no longer needed him.

4 Q. What do you mean as long as we paid his salary?

5 A. Well, if we had stopped paying his salary he  
6 wouldn't have stayed.

7 Q. Well, he stayed on as long as you asked him to;  
8 isn't that right?

9 A. And as long as I think he needed to pay his salary  
10 and the company continued to pay his salary.

11 Q. I don't understand what your distinction is.

12 A. Well, what is your distinction?

13 Q. Jeff stayed on as long as you asked him to?

14 A. Yes.

15 Q. Okay. All right.

16 In the time leading up to the asset sale --

17 MR. DONOHUE: Your Honor, if I may, just --  
18 not to interrupt, but it's almost --

19 THE COURT: She started at quarter of 2:00,  
20 so you have two minutes left.

21 MR. DONOHUE: Thank you.

22 THE COURT: More than that. You have about  
23 three minutes left.

24 MS. GIBSON: Okay. I will -- this may be a  
25 good time to go ahead and break to let the other witness --

1 THE COURT: All right.

2 Ms. Geiser, thank you, ma'am.

3 MS. GIBSON: -- in.

4 THE COURT: We're going to ask you to sit  
5 back here with Mr. Potashnik and we'll finish you up  
6 tomorrow morning.

7 If you'd go ahead and call, for the record,  
8 your next witness.

9 Mr. Donohue, would you get -- Rick, would  
10 you get Mr. Jones from outside, wherever he's at.

11 MS. GIBSON: I just need to switch the  
12 chairs.

13 (The witness entered the courtroom.)

14 THE COURT: Mr. Jones, if you'd come all  
15 the way up here, sir. Mr. Jones, if you'd just come have a  
16 seat up here.

17 MS. GIBSON: We are on Plaintiff's 4?

18 THE COURT: Four, I think, is next.  
19 Just have a seat.

20 Mr. Jones was sworn in this morning before  
21 you-all got here. So his testimony, like all the witnesses,  
22 is under oath.

23 And, again, if you'd call him for the  
24 record, Ms. Gibson.

25 MS. GIBSON: I'm sorry?

1 THE COURT: If you'd call the witness for  
2 the record.

3 MS. GIBSON: Oh, yes. The plaintiff calls  
4 Keith Jones.

5 THE COURT: All right. Very good. He's on  
6 the stand.

7 KEITH JONES,

8 having been first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. GIBSON:

11 Q. Mr. Jones, you are the former chief financial  
12 officer for the business, the businesses that  
13 Brian Potashnik and Cheryl Potashnik ran?

14 A. The three Southwest Housing companies, yes.

15 Q. Okay. And your salary was allocated across one or  
16 more of those entities?

17 A. Yes.

18 Q. Okay. Was it allocated across all three?

19 A. Yes.

20 Q. All right.

21 And during your tenure as CFO, you -- you  
22 worked with Jeff Carpenter on setting sale-proceeds bonuses  
23 for other employees as part of the -- as -- let me -- let me  
24 say that again. You worked -- well, let me just do this.  
25 I'm handing you what's been marked Exhibit 4. Do you

1 recognize Exhibit 4, Mr. Jones?

2 A. Yes.

3 Q. And is Exhibit 4 an accurate copy of an Email that  
4 you sent to Jeff Carpenter while you were employed as CFO?

5 MR. L. FRIEDMAN: Let's approach,  
6 Your Honor.

7 MR. DONOHUE: May we approach?

8 THE COURT: Okay.

9 (Sidebar conference held)

10 Q. (By Ms. Gibson) Mr. Jones --

11 MR. L. FRIEDMAN: Was the ruling on the  
12 record?

13 THE COURT: It is -- well, I don't know.  
14 There was an offer on the record, but four is not admitted  
15 at this time. We'll put the objection on the record at a  
16 later time.

17 MR. L. FRIEDMAN: Thank you.

18 Q. (By Ms. Gibson) Mr. Jones, during your tenure as  
19 chief financial officer, you worked with Jeff Carpenter in  
20 connection with identifying --

21 MS. GIBSON: And I'm not going to ask  
22 specifics, Your Honor.

23 Q. (By Ms. Gibson) -- identifying employees for  
24 purposes of a stay-bonus program to help incentivize key or  
25 important employees to stay?

1 A. Yes.

2 Q. Okay.

3 And the two of you helped -- with respect  
4 to that stay-bonus program, you and Jeff Carpenter -- what  
5 group of employees? You know, what's the pool of employees  
6 from which you were identifying important people?

7 A. Office staff that we needed to maintain through  
8 the transition of sale.

9 Q. Okay.

10 And in connection with that bonus  
11 program -- and I'm not going to get into amounts -- you and  
12 Jeff also worked on identifying what amounts to pay those  
13 important employees in connection with the stay-bonus  
14 program, correct?

15 A. I guess that it was just truly based upon what  
16 people's salaries were. So we were offering amounts for  
17 staying.

18 Q. Correct. But you and Jeff were discussing what  
19 amounts those should be, correct?

20 A. Yes.

21 Q. All right.

22 A. Along with Cheryl.

23 Q. Sure. You-all were making recommendations on  
24 amounts pursuant to the stay-bonus program and then  
25 submitting that to Brian Potashnik or Cheryl Potashnik?

1 A. Yes.

2 Q. And does -- does the document in front of you  
3 refresh your recollection that you were working on that  
4 stay-bonus program at least as of April 25, 2007?

5 A. Yes.

6 MR. DONOHUE: Your Honor, I'm going to go  
7 ahead and object to this whole line of questioning calling  
8 this a stay bonus.

9 THE COURT: Well, it's his words.

10 MR. L. FRIEDMAN: His words, and then she's  
11 asking to read from the document that's not even in  
12 evidence.

13 THE COURT: It's one lawyer, one witness.  
14 It's Mr. Donohue's witness, I'm taking it.

15 Q. (By Ms. Gibson) And I am handing you what's been  
16 marked Plaintiff's Exhibit 5.

17 MS. GIBSON: And this is the same issue,  
18 Your Honor. I just -- I just need to be -- make it -- make  
19 their objection formal.

20 THE REPORTER: Walk behind me, please.

21 Q. (By Ms. Gibson) I'm handing you --

22 THE COURT: You've got to walk around the  
23 court reporter.

24 MS. GIBSON: Oh, I'm sorry.

25 Q. (By Ms. Gibson) -- Exhibit 5.



1 And does that -- is Exhibit 5 another  
2 document concerning the stay-bonus program?

3 A. Yes. One says severance payroll and one says July  
4 7th bonus wages.

5 Q. Okay. And on the stay-bonus program --

6 MR. DONOHUE: Your Honor, I believe the  
7 witness is looking at a document that has not been  
8 introduced into evidence.

9 THE COURT: You can show him the document  
10 to refresh his memory if he needs his memory refreshed. He  
11 hasn't said that he needs his memory refreshed yet.

12 THE WITNESS: These are --

13 THE COURT: They have an objection to  
14 that --

15 THE WITNESS: Okay.

16 THE COURT: -- document, as you know. So  
17 ask him questions if he doesn't remember something.

18 MR. DONOHUE: My concern, Your Honor, is  
19 just which document he's looking at. I don't believe --

20 THE COURT: It's the one in your hand.

21 MS. GIBSON: Oh. I thought I handed it to  
22 you. I apologize if I didn't.

23 MR. DONOHUE: Is it the same document?

24 MR. L. FRIEDMAN: No?

25 THE WITNESS: Yeah. It says June --

1 MR. DONOHUE: No, that's --

2 THE WITNESS: -- June '07 bonus wage.

3 MR. L. FRIEDMAN: Okay.

4 MS. GIBSON: Oh, June is --

5 MR. DONOHUE: That is the same --

6 THE WITNESS: Which are -- which is  
7 different from the severance payroll.

8 Q. (By Ms. Gibson) Okay. Okay. That's a -- that's  
9 just one in which you are setting, what, regular bonuses for  
10 employees?

11 A. Yes.

12 Q. Okay.

13 And were you -- were you also a participant  
14 in the stay-bonus program to incentivize workers to stay on  
15 despite the asset sale?

16 MR. DONOHUE: I'm going to object,  
17 Your Honor. She's called it a stay-bonus program. The  
18 witness just testified it's a severance program.

19 MS. GIBSON: Oh, he said that was a --

20 MR. DONOHUE: He said the regular bonus --

21 THE COURT: If that's your objection, he  
22 can handle the question and you can go over that in your  
23 cross-examination.

24 Q. (By Ms. Gibson) Let's -- let's clarify -- I'm going  
25 to go back and let's clarify the stay bonus and severance

1 issue, okay. When you are talking about a stay bonus you  
2 are talking about an incentive to stay on and do a lot of  
3 extra work toward the asset sale, correct?

4 A. Extra work? I'm trying to keep key employees from  
5 leaving before the sale goes through so we can continue to  
6 run the business.

7 Q. Okay. So stay bonus is to keep employees from  
8 leaving before asset sale. Is that what you said, before  
9 the asset sale?

10 A. Yes.

11 Q. Okay.

12 Okay. And once the companies were sold,  
13 meaning Southwest Housing Management, Southwest Housing  
14 Development, Affordable Housing Construction, at that point  
15 all of the employees who were remaining would be severed  
16 from employment, correct, with --

17 A. With --

18 Q. -- with those entities?

19 A. With those entities, yes.

20 Q. Okay. And then --

21 A. They -- they would be -- they would have been let  
22 go and then another company picked them up if they were  
23 going with the new company.

24 Q. Okay.

25 And so whether someone was going to

1 continue to work for the purchaser or not, there was,  
2 effectively, at the asset sale, a severance of the  
3 employment relationship with the selling entities:  
4 Southwest Housing Management, Development, and Affordable  
5 Housing Construction?

6 A. Yes.

7 Q. Okay. And so in that sense a stay bonus -- you  
8 and Jeff sometimes called the stay bonuses also a severance  
9 because it would be at the end of the day, at the end of  
10 employment?

11 A. That's what a sever -- yes, the severance payroll  
12 is.

13 Q. Okay. So the stay bonus and severance due to the  
14 sale are essentially the same thing, correct?

15 A. I guess so. I called it a severance.

16 Q. Right. So, a bonus to stay, paid at the end, is  
17 also called a severance. I mean, you're not talking about  
18 something different than severance, are you?

19 A. No.

20 Q. Okay.

21 And y'all may have called them other words  
22 at times too, like, retention bonuses or something?

23 A. Possibly.

24 Q. Okay. But -- but you referred often to the stay  
25 bonus as severance, correct?

1           A.     I called it severance, yes.

2           Q.     Okay.

3                     And you and Jeff Carpenter and Sara Reidy  
4 were also intended to be part of the stay-bonus program,  
5 correct?

6                     MR. DONOHUE:  Objection, Your Honor.  
7 That -- that misrepresents what he just testified.  It's a  
8 severance or severance bonus program.  That's what he called  
9 it.

10                    THE COURT:  He can clarify.

11                    Overruled.

12                    THE WITNESS:  I discussed with Brian a  
13 severance package for myself.

14           Q.     (By Ms. Gibson) Okay.  And was it your  
15 understanding -- although I know you weren't present when  
16 different deals were made, was it your understanding that  
17 Jeff Carpenter and Sara Reidy were also part of that  
18 program?

19           A.     I assumed that, yes.

20           Q.     Okay.

21                     And at one point you Emailed Jeff Carpenter  
22 a copy of the agreement you were going to use, correct?

23           A.     I believe I did.

24                     MS. GIBSON:  Mr. Friedman.

25                     MR. L. FRIEDMAN:  Thank you.

1 Q. (By Ms. Gibson) I'm handing you what's been marked  
2 Exhibit 6.

3 MR. DONOHUE: Your Honor, and we certainly  
4 object to this as violating the limine we just discussed.

5 THE COURT: Let me see it.

6 MS. GIBSON: Your Honor, this is an Email  
7 to Jeff Carpenter saying here's the agreement I'm using.

8 THE COURT: Come on over here.

9 (Sidebar conference held)

10 Q. (By Ms. Gibson) Mr. Jones, if you would take a  
11 look at Exhibit 5 [sic], is that a -- an accurate copy of an  
12 Email -- oh, I'm sorry. Six.

13 THE COURT: You said --

14 THE WITNESS: You haven't given it to me  
15 yet. I don't have a copy yet.

16 MS. GIBSON: Your Honor?

17 THE COURT: 'Cause I'm sustaining.

18 If there's something he doesn't remember,  
19 you can use it to refresh his recollection. I've sustained  
20 the objection to the admission of the document.

21 MS. GIBSON: I -- I just -- I realize that.  
22 I just wanted to make sure I formally offered it.

23 THE COURT: We'll do that after the jury  
24 leaves.

25 MS. GIBSON: Okay.

1 THE COURT: All right.

2 I have it written down for both of those.  
3 We'll put it on the record in a minute.

4 MS. GIBSON: Okay.

5 Q. (By Ms. Gibson) Mr. Jones, during your tenure as  
6 chief financial officer, did there come a time when the  
7 business was bleeding money on Brian Potashnik and  
8 Cheryl Potashnik's criminal defense attorneys?

9 A. Yes.

10 Q. Okay. And about how much -- at some point that  
11 reached, I think you testified, to about a million a month  
12 toward their personal criminal defense attorneys.

13 A. I think that was about right. A couple months  
14 that had reached really high.

15 Q. Okay. So not all the time, but there were  
16 certainly a couple months when criminal defense fees for the  
17 Potashniks had become really high?

18 A. Yes.

19 Q. And --

20 MS. GIBSON: Your Honor, I think I need to  
21 approach before the next question. Sorry.

22 (Sidebar conference held)

23 MS. GIBSON: Pass the witness.

24 THE COURT: All right.

25 Mr. Donohue.

1 MR. DONOHUE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. DONOHUE:

4 Q. Mr. Jones, to be clear so there's no confusion,  
5 you called the program that Ms. Gibson's asked you about a  
6 severance program that you and Mr. Carpenter dealt with,  
7 correct?

8 A. Correct.

9 Q. You didn't call it a -- what is the term she  
10 used -- a stay-bonus program. You didn't call it that, did  
11 you?

12 A. I don't believe I did, no.

13 Q. Did you hear anybody else call -- call it a  
14 stay-bonus program at the time that you were there at the  
15 Southwest Housing entities?

16 A. I can't recall.

17 Q. All right.

18 That's a term that Ms. Gibson has injected.  
19 And injected, in fact, in your deposition here a couple of  
20 weeks ago, correct?

21 A. I believe so.

22 Q. This million dollars of cash bleeding for criminal  
23 defense attorneys, in truth, the property portfolios were  
24 doing very poorly from 2004 through 2007, weren't they?

25 A. Yes.



1 Q. They were -- they were bleeding off -- they were  
2 not covering -- the revenue from those property portfolios  
3 was not covering the operating expenses?

4 A. No.

5 Q. So there was not a profit during any of those  
6 years, '04 through '07, correct?

7 A. Which company are you talking about?

8 Q. I'm talking about Southwest Housing Management in  
9 particular.

10 A. Management, no.

11 Q. Okay. And that's the company that Mr. Carpenter  
12 was head of, correct?

13 A. Correct.

14 Q. So there was no profit made in any of those years,  
15 '04 through '07, and those portfolios were bleeding off each  
16 of those -- well, they were bleeding off Southwest Housing  
17 Management's opportunity to make a -- to make a profit,  
18 right?

19 A. Right. The portfolio as a whole did not make  
20 money.

21 Q. So the portfolios themselves, the majority of  
22 the -- the deficit, if you will, during that time, was that  
23 from the portfolio's inability to cover the costs?

24 A. Can you say that again?

25 Q. Yes. Was the majority of the bleeding off, as you

1       termed it, during that time frame due to the fact that the  
2       portfolios were not making money?

3           A.     During which time, the three years?

4           Q.     Yes, sir.

5           A.     There was many times that Brian and Cheryl had put  
6       in their own money to keep those entities going, yes.

7           Q.     So the Potashniks --

8           A.     On the properties.

9           Q.     -- themselves, individually, put in their monies  
10       to try -- to try to make those portfolios perform?

11          A.     Yes.

12          Q.     Because Mr. Carpenter, during his tenure, those  
13       portfolios were not performing; is that right?

14          A.     It was a hard leasing season, yes. They did not  
15       lease up like they were supposed to.

16          Q.     What was -- what was Mr. Carpenter's -- he was the  
17       executive vice president of Southwest Housing Management  
18       Company, Inc.; is that right?

19          A.     I believe his guard was president of the managing  
20       company.

21          Q.     Right. He was the president.

22                        You didn't report to Mr. Carpenter, did  
23       you?

24          A.     No.

25          Q.     You were the CFO, right?

1 A. Correct.

2 Q. Did he ever represent himself as being more than  
3 just president of what you just stated, Southwest Housing  
4 Management, that he was president of the entire  
5 organization?

6 A. Sometimes, yes.

7 Q. When did he represent himself as being the  
8 president of the entire organization?

9 A. Well, he -- when? On occasions when we were  
10 having beers together.

11 Q. Who is -- who is "we", you and Mr. Carpenter? And  
12 anyone else?

13 A. And Deepak Sulakhe.

14 Q. Who is Deepak Sulakhe?

15 A. He is the head of -- the developer, head developer  
16 for Southwest Housing Development.

17 Q. All right.

18 Is that somebody that reported to  
19 Mr. Carpenter, Deepak Sulakhe, that was head of Southwest  
20 Housing Development?

21 A. No.

22 Q. Then how can Mr. Carpenter represent that he was  
23 president over all three entities if you didn't report to  
24 him and neither did Mr. Sulakhe?

25 A. Jeff's -- because he's over the management

1 company, interject a lot on what type products are going  
2 into the units, which was a development decision.  
3 Construction, he helped on -- on certain construction issues  
4 to make sure that the property would lease at a -- fairly  
5 lease to the public. He would make sure.

6 Q. What you're -- but that was his role as president  
7 of the Southwest Housing Management, right?

8 A. That's what I thought, yes.

9 Q. Right. That was within his realm as South -- as  
10 president of Southwest Housing Management was to work with  
11 Southwest Housing Development as well as Affordable Housing  
12 Construction, the other two Southwest Housing affiliated  
13 entities?

14 A. Correct.

15 Q. But he wasn't president of those entities, was he?

16 A. No.

17 Q. Do you know how much he made a year, what his base  
18 salary was?

19 A. Yes.

20 Q. How much?

21 A. 250-. 250,000 annual.

22 Q. Okay. And he was paid for -- for doing the -- for  
23 being president of Southwest Housing Management and  
24 interacting with those two other companies that you just  
25 mentioned, correct?

1 A. Yes.

2 Q. That was part and parcel of what he was paid 200-  
3 to \$250,000 base salary a year for, right?

4 A. Yes.

5 Q. Getting back to Mr. Carpenter representing that he  
6 was -- did he represent that he was president of all the  
7 entities when you were having beer with Mr. Sulakhe?

8 A. He said that his job role is more than just  
9 management.

10 Q. Did he consider himself -- put it this way. The  
11 organizational charts there at Southwest Housing, they  
12 showed you as CFO, actually above Mr. Carpenter, right?

13 A. The organizational chart, yes.

14 Q. And Mr. Carpenter didn't like that, did he?

15 A. No.

16 Q. In fact, he voiced that to you that he considered  
17 himself at least equal to or above you, the CFO?

18 A. He didn't say that. He said that he didn't report  
19 to me, he reported to the Potashniks.

20 Q. Was Mr. Carpenter -- was he indispensable there at  
21 the Southwest Housing entity? Was he replaceable?

22 A. I feel everybody's replaceable.

23 Q. Right.

24 In fact, he was let go around November 1st  
25 or 2nd of 2007, wasn't he?

1 A. Yes.

2 Q. And somebody replaced him; is that right?

3 A. No. The management position had moved over to the  
4 new purchaser.

5 Q All right. And did -- the transition still  
6 occurred regardless if he was there or not?

7 A. Correct.

8 Q. The transition -- the sale to Cascade wasn't  
9 dependent on the presence of Mr. Carpenter, was it?

10 A. Depended on, no.

11 Q. What were your overall job duties and  
12 responsibilities as CFO?

13 A. To make sure our records were kept correct and  
14 keep tax returns filed on time, keep everybody informed on  
15 financial positions.

16 Q. All right. And you prepared -- as CFO, you  
17 prepared regular financial reports for the three entities;  
18 is that right?

19 A. Yes.

20 Q. And supplied the heads of those three entities  
21 with those financial reports, be they monthly or annual; is  
22 that right?

23 A. Yes.

24 Q. The financial statements which would reflect  
25 whether or not the companies were profitable per month and

1 annually; is that right?

2 A. Yes.

3 Q. And you supplied those to Mr. Carpenter as  
4 president of Southwest Housing Management, right?

5 A. Yes.

6 Q. And those reflected whether or not the company was  
7 making a profit every month and every year that you provided  
8 those financial reports to him, right?

9 A. Yes.

10 Q. So he would have known that the company wasn't  
11 making a profit; is that right?

12 A. Yes.

13 Q. So if, in fact, he had -- just assume with me, if  
14 you will, that he had a discretionary bonus that was  
15 dependent on the company objective, the company being  
16 Southwest Housing Management, would a company objective not  
17 be to make a profit every year?

18 A. That is the objective of every company, yes.

19 Q. That's the objective of every company is to be  
20 profitable, right?

21 A. Correct.

22 Q. And that company objective was not met in any of  
23 the three or four years that Mr. -- well, from February of  
24 2004 all the way till he left, November 1st of '07?

25 MS. GIBSON: Object, cumulative.

1 Q. (By Mr. Donohue) Is that right?

2 THE COURT: Excuse me.

3 Overruled.

4 A. The management entity did not make money, no.

5 Q. (By Mr. Donohue) So, in the discretion of those  
6 that made the decisions on paying out, for instance,  
7 employee bonuses -- which would be the Potashniks, correct?

8 A. Correct.

9 Q. -- they would have the discretion to look at those  
10 financial -- determine whether or not Southwest Housing  
11 Management was in fact turning a profit and whether or not  
12 to award Mr. Carpenter an annual bonus or not, right?

13 A. That was at their discretion, yes.

14 Q. Did Mr. Carpenter complain to you that he was --  
15 that he -- that his employment agreement called for a  
16 minimum bonus every year? Did he ever make that kind of  
17 statement to you?

18 A. Actually, I believe that I saw that in his  
19 employment agreement that there was a -- a bone -- an annual  
20 bonus number.

21 Q. All right. And did you also notice that it was  
22 discretionary on whether or not to award that, that bonus?

23 A. I can't recall that.

24 Q. Okay.

25 Did you ever hear, perhaps when you were



1 having beer with Mr. Carpenter, that he claimed that he felt  
2 like he should be paid a sales bonus from the proceeds of  
3 the sale to Cascade?

4 A. Yes.

5 Q. What did he say about that?

6 A. That he felt like he deserved a -- a large bonus.

7 Q. All right. He didn't say that he had an agreement  
8 with Brian Potashnik or Cheryl Potashnik to be paid a bonus.  
9 He just said he felt he should be paid a bonus, right?

10 A. He said that he and Brian had an agreement.

11 Q. He said that he and Brian had an understanding.

12 A. An understanding or agree -- he said an agreement.

13 Q. Do you recall telling me in your deposition that  
14 he told you that -- and Deepak -- that he felt he had an  
15 understanding --

16 A. I believe --

17 Q. -- with Mr. Potashnik?

18 A. I believe those were my words, yes.

19 Q. And that, to you, an understanding doesn't  
20 necessarily mean an agreement. That's the opinion of one  
21 side and not the other?

22 A. That's correct.

23 Q. So, in Mr. Carpenter's opinion, he deserved -- he  
24 felt like he should be paid a bonus from the sales proceeds  
25 of the sale to Cascade?

1 A. Correct.

2 Q. And that's what he told you and Deepak Sulakhe  
3 over beer, right?

4 A. Yes. Plus when we were discussing severance  
5 payrolls, yes. That's why I gave him a copy of my --

6 Q. Right.

7 A. -- document, what I was planning on using.

8 Q. All right.

9 The severance pay -- the severance payroll,  
10 that program, if you will, that Ms. Gibson asked you about,  
11 that wasn't the Potashniks' idea, was it?

12 A. No. It was Jeff and my idea because we were  
13 having key employees leave us.

14 Q. Right. It wasn't them that came to you and said  
15 we're having key employees leave. That was your idea, along  
16 with Mr. Carpenter, that you approached the Potashniks  
17 about, correct?

18 A. Correct. That was our job to make  
19 recommendations.

20 Q. Mr. Carpenter told you that -- did he tell you  
21 about suing his prior employer before he joined Southwest  
22 Housing?

23 A. I heard that he had.

24 Q. All right. And did he tell you, also, that after  
25 he left Southwest Housing that he was employed for a while,

1 at least, by American Housing Foundation, another property  
2 management company?

3 A. Yes.

4 Q. And that he sued them too?

5 A. Yes.

6 Q. Do you recall that Mr. Carpenter was paid a  
7 \$50,000 advance against bonus in his first year there at  
8 Southwest Housing Management?

9 A. Yes.

10 Q. And, in fact, do you recall -- did the company  
11 also pay his taxes on that advance against bonus?

12 A. Did the company pay his taxes?

13 Q. Yes, sir. If you remember.

14 A. I don't -- I don't know if it was written that  
15 way.

16 Q. Have you ever heard the term "forgiveness loan"?

17 A. Yes.

18 Q. Where did you hear that term?

19 A. In our deposition.

20 (Laughter)

21 Q. So you heard that term from me about two weeks  
22 ago?

23 A. Yes.

24 Q. The first time you'd ever heard it?

25 A. I think so, yes.

1 Q. All right.

2 Did you ever hear Mr. Carpenter call that  
3 \$50,000 advance a forgiveness loan; that Mr. Brian Potashnik  
4 somehow had forgiven that advance against the loan?

5 A. He had mentioned that it was for moving costs and  
6 things like that and that it was to be forgiven, and I  
7 couldn't let that 'cause it was a receivable on my books. I  
8 couldn't let it stand as a receivable on my books, so we had  
9 to run it through our payroll, run it through payroll  
10 through his payroll, to get it off my books.

11 Q. All right. Well, you say you couldn't let it  
12 stand?

13 A. Right.

14 Q. And why not?

15 A. You can't have forgiveness of loans without it  
16 passing through payroll.

17 Q. Would that jeopardize -- you're a certified public  
18 accountant, right?

19 A. Yes.

20 Q. Would that jeopardize your license to permit that?

21 A. Yes.

22 MR. DONOHUE: May I approach, Your Honor?

23 THE COURT: Certainly.

24 Approach the witness?

25 MR. DONOHUE: Yes.

1 THE COURT: All right.

2 MR. DONOHUE: The witness. I'm sorry.

3 Q. (By Mr. Donohue) I'm going to hand you what's been  
4 marked as Defendants' Exhibit Number 53, Mr. Jones. We  
5 covered this two weeks ago, also.

6 A. Okay.

7 Q. And I'll represent to you that this is a copy of  
8 Plaintiff/Counter-defendant Jeffrey W. Carpenter's  
9 objections and responses to defendants' counterclaim and the  
10 first set of interrogatories that were served by counsel for  
11 Mr. Carpenter on July 29th of 2008 in this very lawsuit.

12 MR. DONOHUE: Your Honor, we would offer  
13 Defendants' Exhibit Number 53 into evidence.

14 MS. GIBSON: Your Honor, I --

15 THE COURT: Is there any objection?

16 MS. GIBSON: -- I object to admissibility  
17 of these. They could use them for impeachment, but he can  
18 certainly ask him about them.

19 THE COURT: Sustained.

20 We don't admit interrogatories in general,  
21 but you can use them like you would a deposition.

22 MR. DONOHUE: Okay.

23 Q. (By Mr. Donohue) And just -- and with respect to  
24 the question of Mr. Carpenter's job responsibilities as an  
25 employee of Southwest Housing Management Corporation, Inc.,

1 did he spearhead daily operations of one of the fastest  
2 growing multi family developer, builder, and manager with  
3 7100-plus new apartments constructed in Texas? Was he the  
4 spearhead?

5 A. He was the president of the management company.

6 Q. Okay. What about --

7 A. So he -- he was a strong leader in that field,  
8 yes.

9 Q. All right. In management. But what about  
10 developer and builder?

11 A. I believe we had other people in those roles.

12 Q. So he didn't spearhead development, right?

13 A. No. That was Mr. Sulakhe.

14 Q. That was Mr. Sulakhe that you had beer with?

15 A. Yes.

16 Q. And he didn't spearhead the construction, the  
17 builder aspect of it either, did he?

18 A. No.

19 Q. So, if he swore to it, that's an untrue statement;  
20 is that right?

21 A. He could have felt that he spearheaded it.

22 Q. But you were there and he did not spearhead  
23 development or construction?

24 A. When I was there I didn't see that he was  
25 spearheading it.

1 Q. And then, was he directly accountable for all  
2 management-related operations in the communities, a company  
3 with guiding development through Southwest Housing  
4 Development Company? Was he directly accountable for that?

5 A. Yes. He was directly accountable for making sure  
6 that the properties operated correctly.

7 Q. Did he guide development through Southwest Housing  
8 Development, Inc.?

9 A. In making recommendations of possible upgrades and  
10 items inside the unit.

11 Q. What about -- did he guide the accounting entities  
12 to ensure ownership objectives were achieved?

13 A. No. That was my job.

14 Q. So, if he said that -- that's another thing you  
15 did where he was directly accountable for accounting  
16 entities to ensure ownership objectives are achieved. That  
17 was your job, right?

18 A. Right.

19 Q. So, if he swore to that, that too would be an  
20 untrue statement; is that correct?

21 A. He received reports and questioned reports that we  
22 put together. So if that's what he feels is spearheading  
23 accounting --

24 Q. But that was your -- your job?

25 A. That's my job.

1 Q. It says that it collaborated with architects,  
2 engineers, developers, and construction personnel on the  
3 design of site, value engineering to control and reduce  
4 construction and ongoing operational expenses. Was that a  
5 role that he had?

6 A. Yes, he was involved with those aspects of it. I  
7 don't know if he made the final decision on them but he was  
8 an integral part of making decisions along upgrades and  
9 changes that may affect leasing.

10 Q. And then it says that he originated and  
11 implemented the development, slash, management acceptance  
12 standards and procedures of all new construction units to  
13 ensure ownership quality of product was acceptable.

14 Did he originate the development acceptance  
15 standards?

16 A. That may have been before I was there. I don't  
17 know.

18 Q. What was your understanding of his role there as  
19 president of Southwest Housing Management? Mr. Carpenter.

20 A. His role was to run the management and all the  
21 employees that are assisting. I mean, it's -- it's a huge  
22 job to keep a management company going. So his job was to  
23 operate the management company.

24 Q. Okay.

25 A. And all of its employees and train the employees.



1 Q. For which he was handsomely paid every year by  
2 Southwest Housing Management, right?

3 A. He was paid to do that, yes.

4 Q. Did Mr. Carpenter, in speaking with you and  
5 Mr. Sulakhe in particular over beer, did he exaggerate his  
6 own role there at Southwest Housing Management?

7 MS. GIBSON: Object to the --

8 Q. (By Mr. Donohue) The Southwest Housing entities, I  
9 should say.

10 A. I firmly believe he believed it, so I don't --  
11 what's your question? I don't know what your question is.

12 Q. Well, I guess -- in your mind, was it an  
13 exaggeration? I know that he believed it, but did you  
14 believe it?

15 A. Sometimes I thought it was a stretch because it  
16 demeaned my -- what I did.

17 Q. I'm sorry. That last part, it demeaned what you  
18 did?

19 A. Oh, if -- if he was over me. And he wasn't over  
20 me. It demeaned what I did.

21 Q. So, in other words, his characterization of his  
22 role there at Southwest Housing entities was demeaning to  
23 you because you sure didn't report to him. Is that what  
24 you're saying?

25 A. I'm saying -- yeah, I guess I am saying that.

1 THE COURT: You have about four minutes  
2 left, Mr. Donohue.

3 MR. DONOHUE: All right. Thank you,  
4 Your Honor.

5 Q. (By Mr. Donohue) Mr. Jones, in your experience in  
6 real estate, should all agreements be in writing?

7 MS. GIBSON: Object to relevance as to real  
8 estate transactions.

9 THE COURT: Sustained.

10 THE WITNESS: Am I answering?

11 THE COURT: No.

12 Q. (By Mr. Donohue) Did Mr. Carpenter do anything  
13 that you perceived that he wasn't paid to do, do anything  
14 for the Southwest Housing entities that he wasn't paid to  
15 do?

16 A. No. Jeff was a very hard worker.

17 Q. And he was paid for his hard work; is that right?

18 A. Yes.

19 MR. DONOHUE: I'll pass the witness.

20 THE COURT: Okay.

21 Ms. Gibson, you still have about eight  
22 minutes.

23 MS. GIBSON: Okay.

24 REDIRECT EXAMINATION

25 BY MS. GIBSON:

1 Q. Whether you call the stay bonus or these bonuses a  
2 severance or a stay bonus, the intent of both is to get  
3 people to stay, correct?

4 A. Correct.

5 Q. All right.

6 And Jeff Carpenter was part of the  
7 stay-bonus program or severance to, you know,  
8 stay-to-get-severance program, whatever you want to call it,  
9 as well as yourself and Sara Reidy, correct?

10 A. I was under that impression, yes.

11 Q. Okay.

12 And it was -- there was a lot of additional  
13 work to do because of an asset sale, correct?

14 A. Correct.

15 Q. All right.

16 And Jeff Carpenter stayed, correct?

17 A. Yes.

18 Q. All right.

19 So, if he stayed and didn't get paid the  
20 promised stay bonus, then there was something he did that he  
21 didn't get paid for, correct?

22 MR. DONOHUE: Objection, calls for  
23 speculation.

24 THE COURT: All right. Overruled.

25 MR. DONOHUE: Assumes facts not in

1 evi dence, al so.

2 THE COURT: Overrul ed.

3 You can answer i f --

4 THE WITNESS: I can answer that one?

5 THE COURT: If you know, you can answer.

6 THE WITNESS: Would you ask i t agai n?

7 MS. GIBSON: Sure. Sure, sure.

8 Q. (By Ms. Gibson) Jeff Carpenter stayed --

9 A. Uh-huh.

10 Q. -- and you were both part of this bonus program.

11 If he stayed and didn't receive that bonus, then there is  
12 something he did that he didn't get paid for. He didn't get  
13 paid the bonus promised to stay, correct?

14 A. I didn't see an agreement, so I don't know i f I  
15 can answer that.

16 Q. Well, I'm not asking you -- I know you weren't  
17 there. I'm just saying, i f he had an agreement and we know  
18 he stayed and he didn't get paid, then there is something  
19 that he didn't get paid for.

20 A. I guess you can conclude that.

21 Q. All right.

22 And would you have stayed on through the  
23 asset sale i f you weren't promised something more to do so?

24 MR. DONOHUE: Objection, call s for  
25 specul ati on.

1 THE WITNESS: I would have been --

2 THE COURT: Excuse me.

3 THE WITNESS: Okay.

4 THE COURT: Overruled.

5 Go ahead. Answer the question.

6 THE WITNESS: I was -- yeah, I would have  
7 started looking earlier than I started looking.

8 Q. (By Ms. Gibson) Okay. 'Cause it was a lot of  
9 extra work, right --

10 A. It was extra work, yes.

11 Q. -- for an asset sale?

12 And about how many -- I know you're not  
13 going to remember exact numbers, but about how many  
14 apartment communities are we talking about? Like, how big  
15 was the operation?

16 A. Well, they grew quite a bit by the time I was  
17 there because we had so many construction jobs under --  
18 under construction. At one time we had 14 communities going  
19 off at the same time. Plus, we had -- I think it ended up  
20 being about 9,000 units, something around there.

21 Q. And I know you said that everyone's -- everyone is  
22 replaceable, correct?

23 A. Correct.

24 Q. But you and Jeff Carpenter and Sara Reidy were  
25 important to the asset sale, correct?

1 A. Yes.

2 Q. And around this time there was another motivation  
3 or another motive to try and get employees to stay, because  
4 the criminal investigation was in the news, correct?

5 A. Correct.

6 Q. In other words, if employees at your level, CFO,  
7 or at Jeff's level, management of the management  
8 corporation, or Sara Reidy over development, left, the  
9 criminal issues that were all over the papers were probably  
10 going to make it hard to get replacements --

11 MR. L. FRIEDMAN: I'm going to object,  
12 Your Honor, to the injection of facts not in evidence.

13 THE COURT: The sidebar part is sustained.  
14 You can ask him about the --

15 MR. L. FRIEDMAN: Ask that it be stricken.

16 THE COURT: -- the criminal investigation.  
17 So rephrase your question.

18 MS. GIBSON: Okay.

19 Q. (By Ms. Gibson) It was -- it was particularly  
20 important to motivate employees to stay at the time because  
21 of the criminal investigation into the Potashniks, correct?

22 A. Was that the only motivation? I'm not sure if  
23 that was the only motivation.

24 Q. Oh, no. No, I mean I -- I -- I agree --

25 A. It's one of the reasons that we would want to --

1 Q. Okay.

2 A. -- get out in front of people leaving was that the  
3 sale was taking so long to go through we needed to keep  
4 people, plus the fact that there was a lot of negative stuff  
5 coming out in the news. So...

6 Q. Okay. And I know the stuff on the news was about  
7 the criminal investigation?

8 A. It was about -- yes.

9 Q. Okay.

10 Ultimately, or as CFO, do you know who  
11 ultimately would receive the proceeds from the asset sales  
12 to Cascade? Like, where did the money go?

13 A. Into Southwest Development, I believe.

14 Q. Okay. And that was the repository for all of the  
15 sellers?

16 A. By that time the construction company was wound  
17 down, so yes.

18 Q. Okay. And, ultimately, that money would go to  
19 whom?

20 A. Brian and Cheryl.

21 Q. Okay. Brian and Cheryl Potashnik?

22 A. Yes.

23 MS. GIBSON: How am I doing on time, Judge?

24 THE COURT: You got about two minutes.

25 MS. GIBSON: Okay.

1 THE COURT: Mr. Donohue, you still have two  
2 minutes.

3 MR. DONOHUE: I still have two. Thank you,  
4 Your Honor.

5 Q. (By Ms. Gibson) Mr. Donohue asked you a question  
6 in which he assumes that Jeff Carpenter said he had filed a  
7 lawsuit against other employers. Do you recall that?

8 MR. DONOHUE: Objection, Your Honor.  
9 Misstates -- completely misstates my question. There's no  
10 assumption there.

11 THE COURT: Okay. He can handle the  
12 question. Overruled.

13 A. Yes, I recall that.

14 Q. (By Ms. Gibson) Okay. And do you understand the  
15 difference between filing a lawsuit and when at some point  
16 you happen to work for an employer that goes into  
17 bankruptcy, having to file a claim for your wages in  
18 bankruptcy?

19 A. Correct.

20 Q. Okay.

21 A. There's a difference.

22 Q. Okay.

23 And were you aware that what Mr. Donohue  
24 initially asked you about was actually a couple of employers  
25 earlier, not -- not the place?



1 A. No, I was not aware.

2 Q. Okay.

3 And are you aware in that case that the  
4 employer ultimately ended up --

5 MR. DONOHUE: I'm going to object.  
6 Obviously, this is injecting facts that are not in evidence  
7 and lack of foundation.

8 THE COURT: You'll have to establish that  
9 with the witness if he knows those facts. I mean, you're  
10 testifying when you're saying that. If it's true, I don't  
11 know.

12 Q. (By Ms. Gibson) You said that the management  
13 entity didn't make money, correct?

14 A. Correct.

15 Q. But did the organization as a whole make money?

16 A. Yes.

17 Q. Okay. And --

18 A. The construction company made money.

19 Q. Okay. So, as between the management company, the  
20 development company, and the construction company, the  
21 organization as a whole was profitable between 2004 and  
22 2007?

23 A. Yes. 2007, I'm not -- I can't recall, but --

24 Q. 2007, is that the year that the companies were  
25 hemorrhaging money on federal expense fees?

1 A. Yes.

2 Q. Okay.

3 MS. GIBSON: Pass the witness.

4 THE COURT: Okay.

5 Mr. Donohue.

6 MR. DONOHUE: Thank you, Your Honor.

7 **RECROSS EXAMINATION**

8 BY MR. DONOHUE:

9 Q. This transition to Cascade and I guess the  
10 management arm or the management affiliate was Pinnacle?

11 A. Correct.

12 Q. Right?

13 A. A branch of Pinnacle, yes.

14 Q. A branch of Pinnacle?

15 A. Yes.

16 Q. You were asked to go over to the new company, if  
17 you will, the acquiring company; is that right?

18 A. Yes.

19 Q. As was Mr. Sulakhe, right?

20 A. He was asked to consult, yes. He was consultant.

21 Q. As was most all the other employees there at  
22 Southwest Housing, other than Mr. Carpenter, right?

23 A. Correct. They had -- they had a head management.

24 Q. Well, they may have had it. But if he was so  
25 valuable, don't you think they could have found a place for

1 him at Cascade or Pinnacle?

2 A. No. No, in Pinnacle they couldn't have placed him  
3 in that company.

4 Q. The million dollars a month of bleeding that  
5 you -- that you mentioned before, there were also other --  
6 other expenses that were -- that were being incurred at that  
7 point, including bond fees, right?

8 A. Yes.

9 Q. Transaction fees; is that correct?

10 A. I can't recall.

11 Q. What all -- what all were those expenses made up  
12 of?

13 A. A lot of lawyer fees. There's also a lot of funds  
14 having to go into the properties themselves. Yeah, it was  
15 just operations, closing down the operations costs.

16 Q. But they weren't just to -- just to make a clear  
17 picture, it wasn't simply criminal defense attorney fees  
18 that were -- that were causing this bleeding off as you know  
19 it?

20 A. Correct.

21 MR. DONOHUE: I'll pass the witness.

22 THE COURT: All right. Thank you.

23 Thank you, Mr. Jones. You can step down,  
24 but don't leave the courtroom yet. If you want to step down  
25 and have a seat over here, you're welcome to.

1 THE WITNESS: Okay.

2 THE COURT: Ladies and gentlemen, we're  
3 going to stop for the day. Let me give you just a couple  
4 more instructions. And, again, I'll give you instructions  
5 throughout the course of the trial.

6 (Jury instructions given)

7 THE COURT: We're going to start at 9:00  
8 o'clock tomorrow. So, if you'd be back in the jury room by  
9 9:00, then hopefully we'll bring you out right then.

10 You're in the jury box now. We'll ask you  
11 to go to the jury room and Rick will take you out of the  
12 courtroom.

13 We wish you a good afternoon and we'll see  
14 you tomorrow morning.

15 (The jury exited the courtroom.)

16 THE COURT: Y'all come on up.

17 MR. L. FRIEDMAN: Your Honor, before we go  
18 off the record I want to make a motion for mistrial.

19 THE COURT: We're not off the record yet.

20 MR. L. FRIEDMAN: All right.

21 THE COURT: But I'll give you a chance. We  
22 still have some housekeeping to do.

23 You wanted to offer on the record  
24 Exhibits 4 -- you didn't actually offer 5, but you can if  
25 you want -- but at least 4 and 6?

1 MS. GIBSON: Yes, 4 and 6.

2 MR. SANFORD: You don't want to offer 5?

3 MS. GIBSON: No. It was -- it was a  
4 different deal.

5 THE COURT: All right.

6 And if you'll put your objection,  
7 Mr. Donohue, on the record.

8 MR. DONOHUE: All right. Your Honor, our  
9 objection to these exhibits is that they violate the motion  
10 in limine. They go into amounts paid as well as deals made,  
11 if you will, with other employees, the Southwest Housing  
12 entities, which is not -- neither relevant or reasonably  
13 calculated to lead to discovery of admissible evidence.  
14 It's prejudicial.

15 THE COURT: All right. Fair enough.

16 The objection's sustained. Four and five  
17 [sic] are not admitted into evidence but will be left with  
18 the court reporter so that they will be part of the  
19 reporter's record, but not documents to go back to the jury.

20 Mr. Jones is still here. I wanted to keep  
21 him here in case you needed to lay a predicate.

22 You weren't objecting to the authenticity  
23 of the documents. It would have been Mr. Jones who  
24 established that?

25 MR. L. FRIEDMAN: Mr. Jones?

1 THE WITNESS: No.

2 THE COURT: So, can we release Mr. Jones  
3 now?

4 MS. GIBSON: Yeah, as long as they have --  
5 well, do you have any objection?

6 THE COURT: Well, he put his objection on  
7 the record.

8 MS. GIBSON: I mean other, other.  
9 Is that it?

10 MR. DONOHUE: Is that it to what? I'm  
11 sorry.

12 THE COURT: To four and six.

13 MS. GIBSON: Is that -- is that all your  
14 objections?

15 MR. DONOHUE: To four and six, yes, that's  
16 all my objections.

17 MS. GIBSON: Okay.

18 THE COURT: Okay. All right.

19 Thank you for coming, Mr. Jones.

20 THE WITNESS: Okay. Thank you.

21 (Mr. Jones exited the courtroom.)

22 THE COURT: Vikki, you ready?

23 THE REPORTER: Yes.

24 THE COURT: Mr. Friedman, you had a motion.  
25

1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Vikki L. Ogden, Official Court Reporter in and for  
4 the County Court at Law Number 5 of Dallas County, State of  
5 Texas, do hereby certify that to the best of my ability the  
6 above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the parties  
9 to be included in the Reporter's Record, in the above-styled  
10 and -numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that the total cost for the  
13 preparation of the Reporter's Record is \$1,492.00 and will  
14 be paid by Friedman & Feiger, LLP.

15 WITNESS MY OFFICIAL HAND this the 4th day of October,  
16 2018.

17  
18  
19 /S/ Vikki L. Ogden

20 VIKKI L. OGDEN, Texas CSR# 6309  
21 Official Court Reporter  
22 Dallas County Court at Law No. 5  
23 600 Commerce Street, Floor 5  
24 Dallas, Tx. 75202  
25 (214)653-6443  
Certification Expires: 12/31/18

CAUSE NO. CC-08-02072-E

JEFFREY W. CARPENTER, )  
 ) IN THE DALLAS COUNTY  
 )  
 ) Plaintiff, )  
 )  
 )  
 VS ) COURT AT LAW NO. 5  
 )  
 )  
 SOUTHWEST HOUSING DEVELOPMENT )  
 COMPANY, INC., ET AL, )  
 )  
 )  
 Defendants. ) DALLAS, TEXAS

I, Vikki L. Ogden, Official Court Reporter in and for the County Court at Law No. 5 of Dallas County, Texas, do hereby certify that the following exhibit constitutes a true and complete duplicate of the original exhibit admitted into evidence during the proceedings in the above-entitled and -numbered cause as set out herein before the Honorable Mark Greenberg, beginning January 23, 2018.

WITNESS MY OFFICIAL HAND on this the 19th day of  
October, 2018.

1

/S/ Vi kki L. Ogden

Vikki L. Ogden, Texas CSR# 6309  
Official Court Reporter  
Dallas County Court at Law No. 5  
600 Commerce Street, Floor 5  
Dallas, Texas 75202  
(214)653-6443



REPORTER' S RECORD

VOLUME 4 of 14

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
04/29/2019 6:14:22 PM

Trial Court Cause No. CC-08-02072-E

JEFFREY W. CARPENTER,

) IN THE DALLAS COUNTY  
) Clerk

Pl a i n t i f f ,

VS

) COURT AT LAW NO. 5

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC. , ET AL,

Defendants.

) DALLAS, TEXAS

TRIAL ON THE MERITS

On the 24th day of January, 2018, the following proceedings came on to be heard within the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the HONORABLE MARK GREENBERG, Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.

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ALSO PRESENT: Steve Page, AV Technician

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1 P R O C E E D I N G S

2 January 24, 2018

3 THE COURT: All right. We're on the  
4 record.

5 MR. L. FRIEDMAN: Good morning, Your Honor.

6 THE COURT: Good morning.

7 DEFENDANTS' MOTION TO POLL THE JURY

8 MR. L. FRIEDMAN: Your Honor, because  
9 plaintiff's counsel had mentioned, I believe beyond the  
10 scope of both the pleadings and in violation of the Court's  
11 order in limine --

12 THE BAILIFF: Come on in.

13 Got a jury coming through.

14 (Off the record)

15 THE COURT: Go ahead, Mr. Friedman.

16 MR. L. FRIEDMAN: -- matters pertaining to  
17 criminal investigation and criminal prosecution of Brian and  
18 Cheryl Potashnik and then later on in the day mentioned --

19 THE BAILIFF: We have all seven now.

20 MR. L. FRIEDMAN: -- that the matter was  
21 well publicized, I think it's appropriate that the Court  
22 instruct the jury once again that the matter should not be  
23 independently investigated or pursued on the Internet. And  
24 if the Court would, would ask the Court this morning to poll  
25 the jurors individually and ask them whether or not they had

1 actually looked any of this up on the Internet.

2 COURT'S RULING

3 THE COURT: All right.

4 And the motion to individually poll the  
5 jurors is denied, but I'll -- at the end of the day I'll  
6 instruct the jurors again to not do any type of independent  
7 research or anything like that.

8 MR. L. FRIEDMAN: We object to your ruling.

9 THE COURT: Okay. And it's noted on the  
10 record.

11 Ms. Gibson, you're going to continue with  
12 Ms. Geiser?

13 Ms. Geiser, if you wouldn't mind coming  
14 back up.

15 (The jury entered the courtroom.)

16 THE COURT: Everybody have a seat, please.

17 Welcome back and good morning, ladies and  
18 gentlemen of the jury.

19 We're going to continue with the trial.

20 When we stopped yesterday we had started Ms. Geiser's  
21 depo' -- testimony but had not yet concluded it. So the  
22 first thing we'll do this morning is continue with her  
23 testimony until it is completed.

24 We take one 15-minute break in the morning.

25 We take it around 10:20 or so. But if you need a break

1 before then, please let -- get my attention or Vikki's  
2 attention and we'll take a break whenever you need to.

3 In general, depending on how the day works  
4 out, we take one 15-minute break in the morning and we take  
5 two 10-minute breaks in the afternoon. But if that schedule  
6 doesn't work for you very well, we can always change that up  
7 and, for example, take a break every hour on the hour if  
8 that would be more comfortable to you. You'll have a better  
9 idea after today.

10 Ms. Gibson, it's still your witness, and if  
11 you'll pick up just where you left off.

12 MS. GIBSON: Yes, Your Honor. May I move  
13 the --

14 THE COURT: Sure.

15 MS. GIBSON: -- clipboard now that the  
16 jury's in?

17 Can everybody see? Can you see,  
18 Ms. Geiser?

19 CHERYL GEISER,  
20 having previously been sworn, testified as follows:

21 DIRECT EXAMINATION (CONT'D)

22 BY MS. GIBSON:

23 Q. Ms. Geiser --

24 MS. GIBSON: May I approach the easel,  
25 Your Honor?



1 THE COURT: Certainly.

2 Q. (By Ms. Gibson) -- do you agree that a handshake  
3 agreement is as good as a written one?

4 A. If both parties agree to all the terms and  
5 conditions of the agreement, then I agree that an oral  
6 agreement is as good as a written agreement.

7 Q. Okay. And you remember telling me, "I agree that  
8 if both parties agree to the agreement, then it's an  
9 agreement"?

10 A. Correct.

11 Q. Okay.

12 And you also had told --

13 MR. L. FRIEDMAN: Thank you.

14 Q. (By Ms. Gibson) -- me, "And if they shake hands on  
15 it and both parties have agreed, then it's an agreement",  
16 correct?

17 A. If both parties agree to the agreement, then I  
18 agree that it's an agreement.

19 Q. You said if they shake hands on it. Do you  
20 remember that?

21 A. I'll take your word for it.

22 Q. Let me refresh your memory.

23 A. Okay.

24 Q. I'm just going to hand you -- do you see the  
25 highlighted portion?

1           A.    I said, "I agree that if both parties agree to the  
2 agreement then it's an agreement." You said, "Okay." And I  
3 say, "And if they shake on it and both parties have agreed,  
4 then it's an agreement."

5           Q.    Okay. So, if they shake on it and both parties  
6 agree, that's an agreement. Even though it's just oral,  
7 correct?

8           A.    Yes.

9           Q.    Turning back to the beginning of Jeff Carpenter's  
10 deposition, do you recall some discussion about his -- a  
11 written employment agreement with Southwest Housing  
12 Management?

13          A.    Yes.

14          Q.    And you recall your attorney discussing the claim  
15 in this suit that no amendment or alteration of the terms of  
16 that agreement could be valid unless in writing and signed  
17 by the parties?

18          A.    I believe that's an excerpt from the agreement,  
19 yes.

20          Q.    Okay.

21                        Could you take a look at Exhibit 3?

22                       THE COURT: You've got to walk around the  
23 court reporter.

24                       MS. GIBSON: I'm sorry.

25          Q.    (By Ms. Gibson) Do you recognize Exhibit 3?

1 A. Yes.

2 MR. L. FRIEDMAN: Oh, thank you.

3 Q. (By Ms. Gibson) Exhibit 3 is an Email from you to  
4 Gaylon Hull and you're asking for -- you're asking for a  
5 check for \$50,000 for Jeff Carpenter?

6 A. Yes.

7 Q. Okay. And this is in Jeff Carpenter's first year  
8 of employment, correct, November 11, 2004?

9 A. Yes.

10 Q. Jeff Carpenter has not been there a full year yet,  
11 correct?

12 A. Correct.

13 Q. Okay.

14 And you say that this is a loan against  
15 bonus and moving expenses, correct?

16 A. Yes.

17 Q. Okay. And moving expenses, you-all had agreed to  
18 reimburse certain relocation expenses because you recruited  
19 Jeff from another state to come work for y'all?

20 A. Yes. That's in his employment agreement.

21 Q. Okay.

22 And then the check was actually paid from  
23 Affordable Housing Construction?

24 A. Uh-huh.

25 Q. Okay.

1                   And so the three parts of the operation of  
2                   the business -- the development arm, the construction arm,  
3                   and the management arm -- they sometimes loaned money to  
4                   each other; is that accurate?

5                   A.     Yes.

6                   Q.     Okay. And is this an example of that?

7                   A.     Yes. It appears to be.

8                   Q.     Okay.

9                   MR. L. FRIEDMAN: Can I just ask the  
10                  witness to move that microphone closer to her?

11                  THE COURT: Sure.

12                  MR. L. FRIEDMAN: Thank you.

13                  THE WITNESS: I try not to, like, sit all  
14                  the way up here. I mean, do I need to sit all the way up  
15                  here?

16                  THE COURT: You can move the microphone as  
17                  close as you want. The microphone moves. If you want to  
18                  sit further back or closer up, that's up to you. Put the  
19                  mike -- put the microphone wherever is closest to your  
20                  mouth.

21                  THE WITNESS: Okay.

22                  Q.     (By Ms. Gibson) And, Ms. Potashnik, if you would  
23                  now turn to Exhibit 2. If you take a look at Paragraph 4B,  
24                  you see the last line? Employee must be employed by the  
25                  company at the end of the first calendar year for the

1 minimum bonus to be earned?

2 A. Yes.

3 Q. Okay.

4 And you-all orally agreed with  
5 Jeff Carpenter to go ahead and advance 50,000 toward his  
6 bonus and relocation costs even though it wasn't at the end  
7 of the first calendar year, correct?

8 A. We -- we did it, yeah.

9 Q. Right. And that was just an oral agreement,  
10 correct?

11 A. I guess so.

12 Q. Okay.

13 And this contract wasn't modified or  
14 amended in writing to accomplish that?

15 A. No, it was not.

16 Q. Okay.

17 A. I guess it's in writing to the extent I write that  
18 I need a check for Jeff and as a loan against his bonus and  
19 moving expenses --

20 Q. Okay.

21 A. -- pursuant to his employment agreement. So --

22 Q. You wrote that. But even though the contract said  
23 that the first-year bonus would be paid at the end of the  
24 year, there was an advance done just orally, correct?

25 A. Well, it's in writing, pursuant to my Email.

1 Q. Well, there's no -- there's no amendment to the  
2 contract signed by all parties to accomplish that?

3 A. To accomplish an advance, you're correct.

4 Q. Okay.

5 A. But he was advanced the bonus pursuant to a  
6 written directive that I gave to my CFO.

7 Q. Right, but you didn't amend the contract to do  
8 that --

9 A. Correct.

10 Q. -- correct?

11 I'm handing you what's been marked  
12 Plaintiff's Exhibit 8. Do you see that this is a December  
13 22nd, 2005 -- or do you recognize this document?

14 A. I don't really recognize it 'cause I've seen it in  
15 the course of this litigation, but I agree that it's  
16 probably true that it's an Email from Keith to Jeff.

17 Q. And you. Do you see --

18 A. Yes, I'm on there too.

19 Q. Okay.

20 MS. GIBSON: Plaintiff offers Exhibit 8.

21 THE COURT: Any objection?

22 MR. L. FRIEDMAN: No.

23 THE COURT: Eight is admitted.

24 Q. (By Ms. Gibson) Okay. So, at the end of 2005,  
25 here what's happening is you're addressing settling the

1 advance on bonus per the agreement we came up with?

2 A. Say your question again, please.

3 Q. Sure.

4 What's going on in Exhibit 8 is you-all are  
5 settling the advance of bonus, okay, per the agreement we  
6 came up with?

7 A. That's what Keith says. Attached is the recap of  
8 Jeff's cost to be reimbursed and the settling of the advance  
9 on bonus per the agreement we came up with.

10 Q. Okay.

11 A. Just an FYI.

12 Q. And the -- the agreements on how to handle the  
13 \$50,000 advance is addressed on the next page. That  
14 agreement also wasn't in writing how you-all decided to  
15 handle that.

16 A. I don't really know if that's true. We had an HR  
17 department that possibly could have documented this in  
18 Jeff's HR file. But I know you're calling Devona Gray. You  
19 can ask her that question.

20 Q. And -- but the agreement that y'all reached on how  
21 to handle that bonus, there's no amendment to the employment  
22 agreement signed by all parties?

23 A. Not that I'm aware of, but there might have been  
24 something in her -- in his employment file.

25 Q. Okay.

1                   You-all reached that agreement just orally,  
2 but there may be some documentation of it somewhere?

3           A.    The oral -- we reached what agreement orally?

4           Q.    I'm sorry?

5           A.    What agreement did we reach orally?

6           Q.    How to handle -- how to handle the advance on  
7 bonus in 2005. You're talking about the settling of the  
8 advance on bonus.

9           A.    Well, the settling of the advance on bonus, per  
10 Keith's testimony yesterday, had to be run through payroll  
11 to be properly treated.

12          Q.    Right, but --

13          A.    So --

14          Q.    Correct, because --

15                   MR. L. FRIEDMAN: I'm just going to ask  
16 that Ms. Gibson allow the witness to finish her answer  
17 before she asks the next question.

18          Q.    (By Ms. Gibson) I'm sorry. I didn't mean to  
19 interrupt you, if I did. Go ahead, if you weren't finished.

20          A.    I'm just saying that per Keith's testimony  
21 yesterday he had to run the bonus through payroll to be  
22 compliant with whatever accounting principles that needed to  
23 be complied with. So that part was handled by Keith.

24          Q.    Okay. But the agreement y'all reached on how to  
25 handle it did not involve a modification or amendment?



1           A.    I don't know that's an agreement. That's just how  
2   it had to be handled. So, as far as the bonus goes, I  
3   don't -- that's just a legal accounting thing, I guess, that  
4   Keith felt had to be done.

5           Q.    Per the agreement we came up with.

6           A.    And I don't know what he's referring to here.

7           Q.    Okay. If -- if -- whatever he's referring to,  
8   there's no amendment or modification signed by both parties  
9   to amend the employment agreement, was there?

10          A.    I don't know what he's talking about, but I don't  
11   recall seeing an amendment to the employment agreement, no.

12          Q.    Okay. So that's something else that you-all  
13   worked out orally, even though it may be documented  
14   somewhere like on this Email; is that right?

15          A.    I don't really know. I mean, his -- his  
16   employment agreement, per Paragraph 5, Section B, talks  
17   about reimbursement of up to 36 -- or not to exceed \$36,000  
18   in moving expenses, and he has moving expenses of 35,375.20.  
19   So the only agreement would have been -- I don't know if  
20   this is consistent with his employment agreement, so I  
21   really don't know what Keith's talking about in that Email.

22          Q.    Okay.

23                   I'm handing you what's been marked  
24   Plaintiff's Exhibit 9. Do you recognize that document?

25          A.    Okay.

1 Q. Okay. And that document is an Email string  
2 between you and Devona Gray?

3 A. Uh-huh. Yes, it is.

4 Q. About certain compensation for Jeff Carpenter?

5 A. Yes.

6 MS. GIBSON: Plaintiff admits -- or offers  
7 Exhibit 9.

8 THE COURT: Any objection?

9 MR. DONOHUE: Your Honor, if you give us  
10 just a moment. This is the first time that we've gotten any  
11 of the exhibits from the plaintiff.

12 MS. GIBSON: We gave -- we exchanged lists.

13 MR. L. FRIEDMAN: No need to fight over it.  
14 Just give us a second.

15 (Pause)

16 MR. L. FRIEDMAN: I don't have any  
17 objection to it, Your Honor.

18 THE COURT: Nine -- nine is admitted.

19 MR. L. FRIEDMAN: This is nine?

20 THE COURT: Yes.

21 Q. (By Ms. Gibson) And do you see that you are  
22 Emailing Devona Gray and you are saying you see that Jeff  
23 had a title change and you're asking, "But didn't he get a  
24 raise at some point," is that correct?

25 A. I said -- or Devona says to me --

1 Q. I'm -- I'm -- this is below her response where  
2 you're sending --

3 A. I don't like when you show small clips. Can I see  
4 the whole --

5 Q. You have -- it's the same --

6 A. Well, the jury needs to see the whole thing.

7 Q. Well, Ms. Geiser, if I show the whole document,  
8 people can't see it, okay. But we're going to talk about  
9 all of it and it's going to be offered in evidence, and they  
10 can see the whole thing.

11 So, the initial -- in the initial Email you  
12 are asking -- the Email on November 26, 2007, from you to  
13 Devona Gray, you're asking if Jeff Carpenter got a raise at  
14 some point, correct?

15 A. This says from Devona to me. From Devona Gray to  
16 Cheryl Potashnik.

17 Q. So look below that. You see it's an Email string?

18 A. Okay.

19 Q. Okay. Below that is your, it says, original  
20 message?

21 A. Uh-huh.

22 Q. From Cheryl Potashnik, Monday, November 26, 2007,  
23 at 10:00 a.m.?

24 A. Okay.

25 Q. Okay.

1 And you're asking, Didn't Jeff get a raise  
2 at some point, correct?

3 A. Uh-huh. Yes.

4 Q. Okay.

5 And then Devona Gray responds to you, to  
6 that Email, on November 26, 2007. And she says Jeff's  
7 salary was increased to \$210,826?

8 A. Uh-huh. Yes.

9 Q. With the addition of \$139.48 adjustment and a  
10 \$276.92 car allowance effective January 6, 2006.

11 Now, if -- if this was truly a raise in his  
12 salary, that was done orally as well, correct? In other  
13 words, there was no modification to the original employment  
14 agreement that set his salary at 200,000?

15 A. Say that again, please.

16 Q. Okay. You see in Exhibit 2 that Jeff's  
17 salary --

18 A. Yes.

19 Q. -- is \$200,000?

20 MS. GIBSON: I'm trying to get it to pop  
21 up.

22 THE COURT: You can zoom out some so it's  
23 not -- the (inaudible) is not so good.

24 Q. (By Ms. Gibson) All right. You see the salary is  
25 \$200,000 in that loan?

1 A. Yes.

2 Q. And so, if Jeff Carpenter did actually get an  
3 increase in his base salary, that's something you-all did  
4 orally without a formal written modification to this  
5 employment agreement, correct?

6 A. I don't agree that it was done orally. It was in  
7 writing, because Devona would not have known all of this if  
8 it wasn't in his HR file. But it was not requested as an  
9 amendment to the employment agreement.

10 Q. Okay.

11 A. I'll concede that.

12 Q. All right.

13 So this is something else you-all just  
14 agreed to without a formal amendment to the employment  
15 agreement, correct?

16 A. His salary was increased and it didn't result in  
17 an amendment to the employment agreement, correct.

18 Q. And while Mr. Carpenter worked at Southwest  
19 Housing there were lots of things that you-all just handled  
20 orally without formal writings --

21 A. I would strongly disagree with that.

22 Q. -- such as -- such as -- you disagree?

23 A. Yes.

24 Q. Okay. Fine.

25 A. I disagree because our business was highly

1 regulated.

2 Every deal that closed had a volume of  
3 closing documents that was several feet tall. Every deal  
4 was documented, the specifics of every deal was documented,  
5 every point was negotiated, every point was documented, in  
6 writing. Our entities were audited in order for audit  
7 opinions to be issued. Every transaction had to have a  
8 corresponding backup to it. So I highly disagree with your  
9 characterization of our business that a lot of things were  
10 done orally.

11 Q. Okay. The -- so you're talking about your  
12 agreements or deals on properties, your deals with vendors,  
13 etcetera, correct?

14 A. I'm talking in general. The nature of our  
15 business was not to enter into oral agreements.

16 Q. When it came to employees at Southwest Housing  
17 Management or Affordable Housing Construction or Southwest  
18 Housing Development, when it comes to the relationship with  
19 employees, particularly at the higher -- at the higher  
20 levels, such as Jeff and Sara, a lot of things were handled  
21 orally, such as performance reviews, correct? And that's  
22 one example.

23 A. I don't know. I don't know that we handled  
24 performance reviews orally.

25 Q. Did -- were there written performance reviews?

1           A.     There may have been. We have a lot of people who  
2 worked for the organization who were in charge of that type  
3 of thing. I don't recall.

4           Q.     Okay.

5                     And you have heard your attorneys say in  
6 this case that the agreement -- the agreements we're talking  
7 about today would not be valid because they were not made in  
8 writing and signed by both of the parties to the agreement.

9           A.     I'm not a lawyer, but I don't consider giving  
10 someone a raise something that would have fallen under that  
11 agreement. But if that's the legal position, then I'm not  
12 going to argue with it.

13          Q.     I'm just asking if -- if -- if you agree with that  
14 position?

15          A.     Yes.

16          Q.     Okay.

17                     Earlier you told me that you agree that if  
18 they shake on it and both parties agree, that's an  
19 agreement, even though it's oral?

20          A.     Yes.

21          Q.     Okay.

22                     I'm handing you a pleading from this case.  
23 Do you see a file stamp at the upper right corner?

24          A.     Yes. Sorry. I can't see.

25          Q.     Okay. And you see at the back that your attorney

1 submitted this document, filed it with the court in this  
2 case?

3 A. Yes.

4 Q. Okay.

5 And you see Paragraph 3?

6 A. Yes.

7 Q. Okay. And Paragraph 3 says defendants do not  
8 dispute that under Texas law a written agreement not  
9 required by law to be in writing may be modified by a later  
10 oral agreement, even though it provides that it may only be  
11 modified in writing.

12 MR. L. FRIEDMAN: Your Honor, I'm going to  
13 object. Calls for a legal conclusion. This is a -- this is  
14 part of the briefing to the Court.

15 THE COURT: What -- was this a -- what  
16 is it? Is this a pleading or is it a motion?

17 MR. L. FRIEDMAN: Pleading. Reply to  
18 motion for summary judgment.

19 THE COURT: Okay.

20 You're asking her legal questions.  
21 Admissions are in the petition and the answer, not in the  
22 summary judgment responses.

23 MR. L. FRIEDMAN: And her position is  
24 consistent.

25 THE COURT: You don't have to -- you can



1 tell the jury your position when it's your turn.

2 Q. (By Ms. Gibson) Would you -- would you take a look  
3 at Exhibit 2 and identify -- well, let's do it this way. In  
4 Exhibit 2 you see that -- I'm just going to ask you  
5 questions, just so you know, about what types of  
6 compensation this agreement covers.

7 A. Okay.

8 Q. Okay. And you see that the agreement covers a  
9 \$200,000 annual salary?

10 A. Yes.

11 Q. And as far as compensation at Paragraph 4B,  
12 it covers a 50,000/200,000 bonus in the first year?

13 A. A minimum discretionary bonus potential would be  
14 50,000.

15 Q. Okay. Well, it covers bonuses for the first year?

16 A. Okay.

17 Q. Is that right?

18 A. Yes.

19 Q. Okay. And it says --

20 A. But that -- that is -- the way you have that  
21 written there is misleading because there's a word before  
22 that that says minimum discretionary bonus potential will be  
23 50,000. There's nothing in the contract that ever says 50-  
24 to \$200,000 bonus.

25 Q. Okay, but it's a summary, so --

1           A.     Well, the summary is misleading because the word  
2 "discretionary" is very prominently included in this  
3 paragraph.

4                     MR. L. FRIEDMAN: Your Honor --

5           Q.     (By Ms. Gibson) Ms. Geiser, if you --

6                     MR. L. FRIEDMAN: Excuse me.

7           Q.     (By Ms. Gibson) -- if you disagree --

8                     MR. L. FRIEDMAN: I want to object to  
9 what's on the screen. Lack of foundation. It's not a  
10 sponsored document.

11                    THE COURT: It's a demonstrative exhibit.

12                    This is something you prepared?

13                    MS. GIBSON: Yes. It's actually  
14 Jeff Carpenter's notes.

15                    THE COURT: All right.

16                    And she can disagree with it if she chooses  
17 to, and she just did.

18                    MR. L. FRIEDMAN: And she has.

19                    THE COURT: All right.

20           Q.     (By Ms. Gibson) All right. So, Ms. Geiser, you --  
21 you disagree with the way this part is phrased, correct?

22           A.     Yes.

23           Q.     Okay.

24                    So, fair to say that Exhibit 2 covers  
25 annual bonus for the first year?

1           A.     In the first calendar year of employment the  
2     minimum discretionary bonus potential will be \$50,000 and  
3     will be based on achieving company objectives. That is the  
4     full sentence. The maximum bonus potential in the first  
5     calendar year of employment the maximum will be \$200,000,  
6     which will be based on overall profitability of the  
7     organization as a whole. That is the full context of that  
8     paragraph.

9           Q.     But my question is it covers bonuses for the first  
10    year, correct?

11                   MR. L. FRIEDMAN: Your Honor, the document  
12    speaks for itself.

13                   THE COURT: It's her question. Overruled.

14           A.     Yes.

15           Q.     (By Ms. Gibson) And if you look back earlier in  
16    the agreement you see that it covers reimbursement of  
17    outstanding business expenses. It's actually right below --

18           A.     It's right below.

19           Q.     -- right below where you were.

20           A.     Paragraph 5A, the company shall pay or reimburse  
21    the employer subject to prior approval and upon presentment  
22    of such vouchers received and other supporting information  
23    as the company may require for all reasonable business and  
24    travel expenses which may be incurred or paid by the  
25    employee in connection with the employment of the employee

1 by the company in accordance with the company's standard  
2 policies then in effect.

3 Q. Okay. Okay, so another type of compensation  
4 it covers is reimbursement of outstanding business expenses?

5 A. That's not compensation. That's reimbursement.

6 Q. Okay. So you don't want to call that  
7 compensation?

8 A. Compensation is under Paragraph 4; expenses is  
9 under Paragraph 5. Reimbursement is covered in A,  
10 relocation is covered in B, and temporary housing is covered  
11 in C. If it was compensation, it would be taxable. If it's  
12 an expense, it's a reimbursement.

13 Q. Okay.

14 What does compensation mean to you for an  
15 employee?

16 A. Compensation is amounts that are paid to them that  
17 are taxable.

18 Q. Okay. So you're distinguishing between  
19 compensation --

20 A. The contract -- the contract makes a distinction.  
21 Section 4 is compensation. Section 5 is expenses.

22 Q. Well, you understand that on a -- people often  
23 refer to their entire package with the employer as their  
24 compensation, but you're -- is that right?

25 A. But that's not what this says, okay.

1 MR. L. FRIEDMAN: I'm going to object.

2 THE WITNESS: Your question --

3 MR. L. FRIEDMAN: Excuse me. Excuse me.

4 THE COURT: Stop.

5 MR. L. FRIEDMAN: Number one, it's  
6 misleading. Number two, it assumes facts not in evidence.  
7 And, number three, lack of foundation.

8 THE COURT: Okay. It's for  
9 cross-examination. Overruled.

10 She doesn't have to agree.

11 Q. (By Ms. Gibson) Okay. So you're distinguishing --

12 A. I'm not distinguishing. The contract  
13 distinguishes. Section 4 is compensation. Section 5 is  
14 expenses.

15 Q. You're claiming the contract distinguishes  
16 between --

17 A. I'm not claiming it. It says it. Section --

18 THE COURT: Let her finish her question.

19 Q. (By Ms. Gibson) Just let me -- okay, all I'm  
20 trying to get to is, things like reimbursement and housing  
21 and insurance, those are benefits, correct? Those are  
22 employee benefits?

23 A. I don't know that expense reimbursement is  
24 employee benefit. If he incurred expenses in conjunction  
25 with his job, he's entitled to reimbursement. So I don't --

1 Q. Okay. So you believe --

2 A. -- see that as a compensation or a benefit.

3 MR. L. FRIEDMAN: I'm going to ask --

4 THE COURT: Okay. Just --

5 MR. L. FRIEDMAN: I'm just going to ask  
6 everybody to do this one at a time 'cause I can't keep up.

7 THE COURT: You're doing fine.

8 Go ahead, Ms. Gibson.

9 Q. (By Ms. Gibson) So you believe that reimbursement  
10 for outstanding business expenses is just something in the  
11 agreement, but it is neither compensation nor a benefit?

12 A. Correct.

13 Q. Okay.

14 And the agreement also covers reimbursement  
15 of location -- relocation expenses up to \$36,000?

16 A. Yes.

17 Q. And you see that the agreement also covers --  
18 thanks, Brian -- temporary, furnished, corporate housing for  
19 up to 90 days?

20 A. For a maximum period of 90 days.

21 Q. Okay. That's the same as up to 90 days, right?

22 A. I'm just reading off the agreement.

23 Q. Okay.

24 Do you -- do you think there's a material  
25 difference? Is there an important difference?

1           A.    I'm obviously overly technical so, I mean, I make  
2           a distinction because the word here is "maximum".

3           Q.    Okay.

4                        So, instead of up to, you say it covers  
5           temporary, furnished, corporate housing for a maximum of 90  
6           days. Okay. And it covers 20 days of paid time off each  
7           12-month period, the agreement does?

8           A.    Well, I have to find that section. Where is that?  
9           Oh, that's --

10          Q.    In number --

11          A.    -- that's in Section 6.

12          Q.    Under 6, yes.

13          A.    Under insurance and under benefits.

14          Q.    Right.

15          A.    An employee shall be eligible for 20 days of total  
16          paid time off for a 12-month period.

17          Q.    Is that a yes?

18          A.    What?

19          Q.    The agreement in Exhibit 2, as far as compensation  
20          and benefits, also covers 20 days of paid time off each  
21          12-month period?

22          A.    Yes.

23                       MR. L. FRIEDMAN: It says insurance and  
24          benefits.

25          Q.    (By Ms. Gibson) And the employment agreement also

1 provides the opportunity to enroll in health insurance,  
2 dental insurance, life insurance, short-term disability,  
3 long-term disability, and a 401k plan after 90 days?

4 A. Yes. At the conclusion of 90 days, employees  
5 eligible to participate and receive other benefits.

6 Q. Okay.

7 And it covers reimbursement of COBRA  
8 insurance expenses until benefits start?

9 A. Yes.

10 Q. Okay.

11 And it covers a \$600 monthly car allowance?

12 A. Correct.

13 Q. And the agreement covers a health club discount if  
14 the employee wants to participate?

15 A. Yes.

16 Q. And if family-health-coverage premium costs exceed  
17 \$4,680 there will be an adjustment in salary to cover that?

18 A. Company will adjust employee's salary in the event  
19 the employee's share of the company-provided health coverage  
20 for the family exceeds \$4,680.

21 Q. Okay. So it covers an adjustment in salary to  
22 cover family-healthcare-coverage premium costs over that  
23 amount?

24 A. Correct.

25 Q. And the agreement covers six weeks' base salary as



1 severance if the company terminates employment?

2 A. Correct.

3 Q. And the agreement that is Exhibit 2 does not cover  
4 any other types of compensation or benefits other than what  
5 we've just talked about, correct?

6 A. Correct.

7 Q. So, at the time in 2004 when this initial  
8 employment agreement was signed, no one anticipated an asset  
9 sale, correct?

10 A. I don't know that that's true.

11 Q. Okay. At the time the employment agreement was  
12 signed in 2004 with Jeff Carpenter, no one had told  
13 Jeff Carpenter that you-all wanted to sell the business?

14 A. I didn't. I don't know if anyone else did.

15 Q. Okay, you did not?

16 A. I did not.

17 Q. Okay.

18 The agreement does not cover any  
19 asset-sale-proceeds bonus?

20 A. Right.

21 Q. And is that you -- you're not sure whether or not  
22 a sale was contemplated at the time?

23 A. Correct.

24 Q. And the agreement does not cover bonuses after  
25 year one, correct?

1           A.    I don't know that -- that it doesn't cover bonuses  
2 after year one.

3                       It says bonus structures will be reviewed  
4 and revised on an annual basis by the company, so it seems  
5 to cover it beyond a year.

6           Q.    Well, as far as bonus-structure compensation, the  
7 initial agreement only covered year one, correct?

8           A.    I don't think that's the context of that whole  
9 paragraph.

10          Q.    Well, we're going to talk about the whole  
11 paragraph, Ms. Geiser. But as far as specific amounts,  
12 it says -- it's talking about the first year?

13          A.    Correct.

14          Q.    Okay. 'Cause you see here it says in the first  
15 calendar year of employment. And the maximum potential is  
16 also for the first calendar year of employment, correct?

17          A.    Right.

18          Q.    Okay.

19                       And the agreement does say that a detailed  
20 bonus plan will be provided later?

21          A.    Right.

22          Q.    And that indicates that any sep -- that you-all  
23 contemplated from day one that there may be additional  
24 agreements on bonuses?

25          A.    Yes.

1 Q. Okay. And the agreement doesn't say whether any  
2 separate agreements on bonuses have to be in writing or  
3 whether they can be oral, correct?

4 A. I don't agree with that characterization.

5 Q. It says the detailed bonus plan will be provided.  
6 It doesn't say whether that plan will be in writing or  
7 whether you-all will just provide it to Mr. Carpenter  
8 orally.

9 A. I mean, there's other provisions in the contract  
10 that address that any changes to the contract have to be  
11 made in writing, so I don't agree with your characterization  
12 there.

13 Q. Well, the -- this doesn't say that the agreement  
14 will be amended, does it? It says that there will be --  
15 it indicates that from day one you-all contemplated future  
16 separate agreements on bonuses, correct?

17 A. No.

18 Q. No?

19 A. No. It doesn't, no.

20 Q. You disagree?

21 A. Yes.

22 Q. Okay.

23 Did you-all ever provide a written bonus  
24 plan for Mr. Carpenter after the first year?

25 A. No.

1 Q. Okay. You-all discussed those issues orally,  
2 correct?

3 A. Discussions of plans, but nothing was ever agreed  
4 upon.

5 Q. Well, that's your contention, but certainly there  
6 were discussions about -- with Mr. Carpenter about catching  
7 up on earned annual bonuses. Do you recall that?

8 A. There was discussions but there was never a bonus  
9 plan that was agreed to.

10 Q. And within the first 90 days of the employment  
11 date neither you nor Mr. Potashnik nor any of the entities  
12 provided what you agreed to provide here?

13 A. That's correct. We did not provide a detailed  
14 bonus plan.

15 Q. You-all just addressed that orally? You  
16 discussed --

17 A. No. We discussed it but it was never agreed to.  
18 We never were able to come up with a detailed bonus plan.

19 Q. I didn't -- I didn't ask that. I said your  
20 discussions about bonuses after year one were oral.

21 A. Discussions were oral as far as I know.

22 Q. If you will go back to the paragraph that you  
23 referenced in Paragraph 12?

24 A. Yes.

25 Q. Okay.

1                   It says no amendment or alteration of the  
2 terms of this agreement shall be valid unless made in  
3 writing and signed by both parties to this agreement,  
4 correct?

5           A.     Yes.

6           Q.     Okay. The terms of this agreement, as far as  
7 compensation, are only what we just talked about?

8           A.     Yes.

9           Q.     Right?

10          A.     Right.

11          Q.     And so the -- any agreement for an  
12 asset-sale-proceeds bonus would not need to amend or change  
13 any of the compensation terms --

14          A.     The term "asset-sale-proceeds bonus" --

15          Q.     -- in the original agreement.

16          A.     -- is one that you've created. That is not a term  
17 that we used at our company.

18          Q.     You never talk -- you never used phrases talking  
19 about bonusing people out of sale proceeds?

20          A.     Out of sale proceeds, but that's different than an  
21 asset-sale-proceeds bonus --

22          Q.     Okay.

23          A.     -- as if it's a separate entity.

24          Q.     So you distinguished between bonusing people from  
25 asset-sale proceeds and a sale-proceeds bonus?

1 A. Yes.

2 Q. Okay.

3 Any agreement about bonusing someone out of  
4 asset-sale proceeds would not alter or modify any of the  
5 compensation terms in Exhibit 2, would it?

6 A. Say that again.

7 Q. Any agreement to bonus Mr. Carpenter out of sale  
8 proceeds would not need to amend or alter any of the  
9 compensation in that original agreement?

10 A. I don't know.

11 Q. You don't know? Well, you've testified earlier  
12 that you're pretty technical, right?

13 A. Yeah.

14 Q. Okay. So, if you look back to Paragraph 12 and  
15 what has to be in writing, it is only if what you're doing  
16 would amend or alter the terms of this agreement, correct?

17 A. Okay.

18 Q. And as far as compensation goes, what we went over  
19 are the only terms of the agreement, correct?

20 A. Correct. Yes.

21 Q. So bonusing someone out of sale proceeds could be  
22 separately agreed without having to change or alter any of  
23 those compensation terms --

24 A. I just don't know if I agree with that because the  
25 funds to pay any bonuses could have been taken from sales

1 proceeds. So I don't -- I don't know that I agree with that  
2 characteri zation.

3 Q. I'm not -- can you help me understand your  
4 reasoning? I'm not understanding what you're trying to say.  
5 Why do you di sagree?

6 A. Because this total di scussion of compensation  
7 never says the source of the funds to pay this will come  
8 from anywhere.

9 Q. No, what I'm saying is, if there's a bonus -- if  
10 there were bonuses paid because people stayed on in  
11 connection with the asset sale, that would not alter the  
12 annual salary. It would not alter or amend or modify the  
13 first-year bonus. It would not affect reimbursement of  
14 expenses. It would not need to alter relocation expense or  
15 housing or PTO or insurance or COBRA or car allowance,  
16 health club, health insurance, or severance, correct?

17 A. Say that again. Can you read it back to me? I  
18 don't --

19 Q. An asset -- a bonus for people to stay on in light  
20 of the asset sale, an agreement to that would not amend or  
21 alter --

22 A. But there was no agreement to that.

23 Q. May I finish the question, please?

24 A. Okay.

25 Q. I'm not asking you to agree whether there was,

1       okay. I'm just talking about what needs to be -- what needs  
2       a writing, Ms. Geiser.

3                       Any bonus to Mr. Carpenter for staying in  
4       light of the asset sale would not change or alter any of the  
5       terms of this agreement as far as compensation goes,  
6       correct?

7                       MR. L. FRIEDMAN: I'm going to object to  
8       the extent it calls for a legal conclusion.

9                       THE COURT: Your position on the legal  
10      conclusions aren't legal conclusions.

11                      Answer the question.

12                      THE WITNESS: If there was a separate bonus  
13      program separate from this employment agreement then I would  
14      agree.

15              Q.     (By Ms. Gibson) Okay. And the -- so you would  
16      agree with me that bonuses after year one or any separate  
17      bonus out of asset-sale proceeds does not need -- would not  
18      need to be in writing, per your understanding, because  
19      it wouldn't amend or alter the terms of this agreement as  
20      it relates to compensation?

21              A.     Can you ask me that again?

22              Q.     Sure.

23                      Bonuses after year one and any bonus for  
24      staying in light of the asset sale would not need to be in  
25      writing and signed by both parties because that compensation



1 would do nothing to alter the terms of this agreement when  
2 it comes to compensation?

3 A. I don't know if that's true. I mean, it says a  
4 detailed bonus plan will be provided. I mean, it's  
5 contemplated in the agreement. I don't know.

6 Q. One thing we know for sure is that from day one on  
7 this agreement there were future agreements contemplated,  
8 correct?

9 A. I don't know that it contemplates future  
10 agreements. It's something that would have been contained  
11 in this agreement.

12 Q. A detailed bonus plan will be provided to the  
13 employee within --

14 A. If it's contemplated in that agreement then I  
15 think it's part of that agreement, but I don't know.

16 Q. Well, that, a detailed bonus plan will be  
17 provided, that's something to happen in the future, correct?

18 A. As part of this agreement.

19 Q. And so -- well, it doesn't say that.

20 A. It's in the agreement.

21 Q. The agreement says one will be provided --

22 A. As part of the agreement.

23 Q. -- but it doesn't -- it doesn't say what the terms  
24 are --

25 A. Okay.

1 Q. -- right?

2 A. Right.

3 Q. Okay.

4 So, certainly, the parties contemplated  
5 future deals as far as annual bonuses, correct?

6 A. As part of this agreement.

7 Q. The parties contemplated, from day one, future  
8 agreements concerning bonuses, correct?

9 A. As part of this agreement.

10 THE COURT: Y'all are going back and forth.  
11 You need to move on.

12 Q. (By Ms. Gibson) And the agreement on the  
13 moonlighting provision also says --

14 A. What -- okay.

15 Q. This is on 3B.

16 A. Okay.

17 Q. 3B contemplates that Jeff Carpenter may, at some  
18 point in the future, be employed by an affiliate of  
19 Southwest Housing Management, correct?

20 A. Can I read it?

21 Q. Sure.

22 (Witness reading document)

23 A. Okay.

24 Q. So, from day one, the parties contemplated that  
25 Jeff Carpenter might, in the future, do work or be employed

1 by one of Southwest Housing Management's affiliates,  
2 correct?

3 A. I would agree that that has -- it's written weird,  
4 but I would agree that that's how this reads.

5 Q. Okay.

6 A. I don't know that Southwest Housing Management  
7 ever contemplated that he would be employed by another  
8 entity, but...

9 Q. Well, it doesn't say he would or would not, but it  
10 contemplates that that might -- that might be --

11 A. As it's written.

12 Q. -- something that could happen in the future --

13 A. Uh-huh.

14 Q. -- correct?

15 A. As it's written, yes.

16 Q. And the affiliates would be Southwest Housing  
17 Development Company, correct?

18 A. I mean, I guess --

19 Q. One of them?

20 A. -- the affiliates could be anything that was an  
21 affiliate.

22 Q. Okay. Southwest Housing Development was an  
23 affiliate, correct?

24 A. It had an affiliated ownership, yes.

25 Q. I'm sorry. I couldn't -- I couldn't hear you.

1 A. It had common ownership, correct.

2 Q. And the construction arm of the business also was  
3 an affiliate, correct?

4 A. Affordable Housing Construction was also -- had a  
5 common ownership, correct.

6 Q. Okay.

7 So, from day one, when -- in 2004, when  
8 Mr. Carpenter and you-all entered this agreement, the  
9 agreement itself contemplated that there may be future  
10 agreements, correct?

11 A. I disagree.

12 Q. Do you agree that if the parties shake on it and  
13 both parties agree, there's an agreement, notwithstanding  
14 what we were talking about in the employment contract?

15 A. You're qualifying that question. Can you ask  
16 it to me directly?

17 Q. Can I ask it to you how?

18 A. Can you re-ask it to me?

19 Q. Sure.

20 Do you believe that if the parties have a  
21 written agreement, that if they strike a deal, if they shake  
22 on it and both parties agree, that there is still an  
23 agreement?

24 A. I mean, as I said before, if both parties agree to  
25 an agreement, then I agree that it's an agreement.

1 Q. Okay. Even if they had something different or  
2 separate in writing already?

3 A. I mean, I don't know, Ms. Gibson. I'm not a  
4 lawyer. If a contract calls for a written -- everything has  
5 to be in writing, then I would say everything has to be in  
6 writing. If, under Texas law, an oral agreement satisfies  
7 that, if both parties agree and there's a meeting of the  
8 minds and the terms are agreed to, then I would agree that's  
9 an agreement.

10 Q. And the truth is, during discussions with  
11 employees about bonusing them out of asset-sale proceeds if  
12 they would stay, you didn't go back and dust off their  
13 employment agreements to look at while you had those  
14 discussions, did you?

15 A. That's incorrect.

16 Q. You did?

17 A. Not everybody had an employment agreement and so  
18 everyone's situation is different.

19 Q. All right.

20 For those people who did have a written  
21 employment agreement, the truth is that during discussions  
22 with them about bonusing them out of asset-sale proceeds if  
23 they would stay, you were not looking at their written  
24 employment agreement?

25 MR. L. FRIEDMAN: Okay, this is --

1 THE WITNESS: I don't agree with that.

2 MR. L. FRIEDMAN: -- in violation of the  
3 I i m i n e --

4 MS. GIBSON: Okay.

5 MR. L. FRIEDMAN: -- Your Honor. We're  
6 j u s t t a l k i n g a b o u t M r . C a r p e n t e r .

7 THE COURT: Well, she talked about the  
8 p r o g r a m , s o --

9 MR. L. FRIEDMAN: And she hasn't  
10 e s t a b l i s h e d a n y p r o g r a m .

11 THE COURT: Okay.

12 MS. GIBSON: With -- sorry. With --

13 THE COURT: O b j e c t i o n ' s o v e r r u l e d .

14 Q. (By Ms. Gibson) During any time in your  
15 d i s c u s s i o n s w i t h M r . C a r p e n t e r , d i d y o u -- w h e n y o u - a l l w e r e  
16 d i s c u s s i n g a b o u t b o n u s i n g h i m o u t o f t h e a s s e t - s a l e p r o c e e d s  
17 i f h e w o u l d s t a y , d i d y o u e v e r s a y , " B u t , J e f f , o u r  
18 h a n d s h a k e d e a l i s n o t g o i n g t o b e g o o d u n l e s s i t ' s i n  
19 w r i t i n g a n d a n a m e n d m e n t t o y o u r e m p l o y m e n t a g r e e m e n t ? "

20 A. D i d I e v e r s a y t h o s e w o r d s t h a t y o u j u s t s a i d ?  
21 N o .

22 Q. Okay.

23 A. B u t I n e v e r u s e t h o s e w o r d s , s o t h a t ' s w h y I  
24 d i d n ' t s a y t h a t .

25 Q. I m e a n , y ' a l l d i s c u s s e d b o n u s i n g J e f f C a r p e n t e r

1 out of the asset-sale proceeds if he would stay. And during  
2 those discussions y'all never talked about the terms of this  
3 written agreement, correct?

4 A. I don't know if that's true or not.

5 Q. Okay. You don't recall one way or the other?

6 A. I don't recall how character -- how we  
7 characterized discussions. And they were simply  
8 discussions. They weren't agreements and they were  
9 discussions.

10 Q. Ms. Geiser, at some point in deciding to sell the  
11 business, you and Brian Potashnik considered the potential  
12 for a mass exodus of employees before the asset sale  
13 happened, correct?

14 A. I know I did. I can only speak for myself.

15 Q. So you're saying that you did not discuss that  
16 with Brian Potashnik?

17 A. We had discussions about employees leaving and --  
18 because how it normally happens in the property management  
19 business is when a new company buys an apartment complex  
20 they come in and get rid of all the onsite staff: Property  
21 manager; the maintenance people; that kind of thing. The  
22 majority of our employees, we're property level employees.  
23 We have 60 properties. There was probably an average of  
24 five employees per property. That's about 300 employees.  
25 So that is where the mass exodus concern came in.

1 And we ultimately negotiated with the buyer  
2 of our company to hire all of our employees. So when the  
3 transition happened everyone knew they would have a job and  
4 everyone was retained.

5 Q. Do you recall -- do you recall being at your  
6 deposition, Ms. Geiser? Correct?

7 A. Yes.

8 Q. Okay. And in connection --

9 MS. GIBSON: This is 58, 25.

10 MR. L. FRIEDMAN: Give me a second.

11 (Pause)

12 Okay.

13 Q. (By Ms. Gibson) And so, in your deposition, I  
14 asked, "So, at some point, y'all considered the potential  
15 for a max exodus of employees before the asset sale  
16 happened?"

17 MR. L. FRIEDMAN: Excuse me. Fifty-eight,  
18 twenty-five?

19 MS. GIBSON: I'm sorry. It's 58 on my  
20 condensed. It is 60, 25. It's Page 58 at the top; it's  
21 Page 60 at the bottom.

22 MR. L. FRIEDMAN: Oh, I see. Okay. Give  
23 me a second.

24 MS. GIBSON: Okay.

25 MR. L. FRIEDMAN: Okay, I'm here.



1 Q. (By Ms. Gibson) Okay. And you say, "Yeah. There  
2 was concern that employees would leave." And I asked, "And  
3 did you and Brian Potashnik consider how to prevent a mass  
4 exodus of employees?" And you said, "Yes."

5 A. Yes.

6 Q. And does that refresh your memory that you  
7 discussed this matter with Brian Potashnik?

8 A. I know we discussed it, yes.

9 Q. And you were also concerned about important  
10 employees leaving before you could get the asset sale done,  
11 correct?

12 A. Yes.

13 Q. And at the time, you believed Jeff Carpenter,  
14 Sara Reidy, and Keith Jones were important employees?

15 A. Among others.

16 Q. Correct. I'm not saying they're the only ones.  
17 Everyone's important in the business. But at the time when  
18 you're talking about trying to keep important employees,  
19 keep them on, those important employees included  
20 Jeff Carpenter, Keith Jones, and Sara Reidy, correct?

21 A. Yes.

22 Q. And what did you-all decide to do? What did you  
23 and Brian Potashnik decide to do to encourage these  
24 important employees to stay, despite the potential for an  
25 asset sale?

1           A.    We talked to the employees about the sale and we  
2    let them know that if, at the end of the day, the sale was  
3    successful and there was money left over at the end of the  
4    day that we wanted them to participate in the success of the  
5    sale and of the business.

6           Q.    And when you initially discussed these incentives  
7    with important employees you were not concerned very much  
8    about having money left over at the end of the day?

9           A.    I'm not sure I can go to my frame of mind at that  
10   particular time. The sale was very complicated. It dragged  
11   on for a long type, so it was hard to quantify what the  
12   sales proceeds, the net proceeds, at the end of the day  
13   would be.

14                       There was an amendment. I think the  
15   contract was signed in April of '07. By June, there was  
16   already an amendment. There was seven amendments  
17   after that. So it was a complicated process. There was  
18   adjustments upward for things happening, there were  
19   adjustments downward for things happening, so I don't know.

20           Q.    You've heard that Mr. Carpenter believes his  
21   agreement was a percentage of certain net seller's revenue  
22   minus stay bonuses paid to other important employees. And  
23   if that's accurate, Mr. Carpenter's bonus would just  
24   fluctuate with the deal, correct?

25           A.    I don't think that's accurate.

1 Q. Well, when you have a percentage formula, if the  
2 transaction turned out -- if it turns out that there was no  
3 seller's revenue, the bonus would simply be zero, correct?

4 A. I don't know because I remember seeing something  
5 that Jeff wrote where he characterized it as if the sale --  
6 net sales proceeds were supposed to be 28 but they were only  
7 20, I would get a bonus based on the 28. So I don't -- I  
8 don't know that I can agree with you on that.

9 Q. Well, that's -- that's something that Jeff  
10 proposed after you-all told him you were not going to pay,  
11 correct?

12 A. I believe I saw that document in November of 20 --  
13 November of 2007. So that would have been after he left.

14 Q. Do you agree with me --

15 A. Because we never had an agreement.

16 Q. I understand that's your position.

17 A. Okay.

18 Q. Okay.

19 The point of offering or telling employees  
20 about your intent to bonus them out of the asset-sale  
21 proceeds was to get them to stay, correct?

22 A. They saw the potential on the horizon that if the  
23 sale was successful that there would be an upside for them.  
24 That was their decision. There was no agreement. There was  
25 no promise to pay anything. There was a hope that the

1 transaction would be successful; and at the end of the day,  
2 if it was successful, they would benefit and participate in  
3 the success.

4 Q. Okay. And you have testified that you were not  
5 actually present when Brian Potashnik made the agreement  
6 with or talked to Jeff about the sales-proceeds bonus.

7 A. If that conversation occurred, I was not present.

8 Q. You had talked to -- and Jeff Carpenter reported  
9 to Brian Potashnik, correct?

10 A. Yes.

11 Q. And when it came to discussing bonusing  
12 employee -- important employees out of sale proceeds, you  
13 discussed that with the people that reported to you? In  
14 other words, such as Sara Reidy?

15 A. I discussed it with Sara.

16 Q. Okay. And Brian Potashnik discussed it with  
17 people who reported to him, like Jeff Carpenter?

18 A. Any conversation that happened between Brian and  
19 Jeff happened between Brian and Jeff. I had a conversation  
20 with Sara. Sara and I were not only in a business  
21 relationship, we had a personal friendship and we talked all  
22 the time.

23 Q. Y'all were very, very good friends --

24 A. Yes.

25 Q. -- correct? Okay.

1                   During Jeff Carpenter's employment, your  
2 family and Jeff Carpenter's family did things like y'all had  
3 Thanksgiving together once, correct?

4           A.     You pointed that out to me. I don't remember it.  
5 I'm not denying it happened. It could have happened.

6           Q.     Okay.

7                   And during Jeff Carpenter's employment you  
8 repeatedly told him that you appreciated his hard work?

9           A.     That sounds like something I would say.

10          Q.     During Jeff Carpenter's employment, you never --  
11 you never fired him for any reason at all?

12          A.     Correct.

13          Q.     You never wrote him up?

14          A.     Correct.

15          Q.     You never gave him any type of written discipline?

16          A.     I didn't. I wasn't his direct report. You  
17 established that he reported to Brian.

18          Q.     Well, I understand, but you -- a lot of the  
19 employees thought that you were one of the owners of the  
20 companies, correct?

21          A.     That may be true.

22          Q.     Okay.

23                   And did you hold yourself out to the public  
24 as one of -- as an owner of the companies?

25          A.     The public knew that I worked for the company.

1 The public knew that I was married to Brian. The public  
2 knew what they knew, but to the public Brian was always the  
3 owner of the company. He was always the face of the  
4 company. Every interview, every grand opening that we ever  
5 had at any of our properties was all Brian.

6 Q. Did you, however, ever represent yourself to the  
7 public as an owner of the company?

8 A. It's possible, yeah. Brian and I were a team,  
9 so...

10 Q. Okay.

11 A. But he's on the cover there. I'm only on the  
12 insert. I know that article you're going to show me.

13 Q. Okay. You saw me getting it out.

14 A. I was pretty pissed about that.

15 Q. All right. You saw it and that refreshed your  
16 memory.

17 I am handing you --

18 MR. L. FRIEDMAN: If I'm not in it, I'm  
19 going to object on the basis of relevance.

20 (Laughter)

21 THE COURT: Noted.

22 MR. L. FRIEDMAN: Thank you.

23 Q. (By Ms. Gibson) I'm handing you what has been  
24 marked Plaintiff's Exhibit 10. It's an excerpt from -- do  
25 you recognize that as excerpt from marketing materials?

1           A.     Well, this was an article that was in Multi family  
2     Executive magazine, and we made copies of it or whatever to  
3     insert into our marketing material.

4           Q.     Okay. And you see in the article that the article  
5     refers to you as a co-owner of the business?

6           A.     Yes.

7           Q.     When --

8           A.     But they didn't give me those articles to edit  
9     either. So, no, they don't give you that kind of editorial  
10    review before they write articles about you.

11          Q.     So you're saying that the writer just got that  
12    wrong?

13          A.     I was -- I mean, Brian was the owner of the  
14    company. I was an owner by virtue of my community property.  
15    I was his wife. I did a lot of work at the company.

16                   So I did not own Southwest Housing  
17    Management. I did not own Southwest Housing Development. I  
18    didn't own -- I did own, through my entity, CLG Consulting,  
19    several job or partnership interests in properties.

20                   Once Brian and I got married, I was  
21    required to sign personal guaranties on all the entities.  
22    So ownership in our business is a little bit more  
23    complicated than just a quote from an article.

24          Q.     Okay. The article refers to you as a co-owner of  
25    the business, though, correct?

1 A. Yes.

2 Q. Okay. And you did have ownership in various  
3 pieces of the business, correct?

4 A. Like I said, my entity, CLG Consulting, owned, I  
5 think, interest in six general or limited partnerships.

6 Q. And in 2005 the FBI started a criminal  
7 investigation that started with a raid at Southwest Housing  
8 Management, correct?

9 A. Yes.

10 Q. And you and Brian Potashnik assured Jeff Carpenter  
11 that you-all had done nothing wrong, correct?

12 A. I'm sure we said words to that effect.

13 Q. Okay.

14 In connection with promises in connection  
15 with the criminal investigation -- I'm sorry. Let me strike  
16 that. I didn't say what kind of promises.

17 In connection with promises about  
18 compensation and promises that you-all had done nothing  
19 wrong as far as the criminal investigation, you and Brian,  
20 do you believe Jeff Carpenter was entitled to trust you?

21 THE COURT: To what?

22 MS. GIBSON: Trust you.

23 MR. L. FRIEDMAN: Objection. The  
24 question's compound and vague as to time.

25 MS. GIBSON: I'll break it up.



1 THE COURT: All right.

2 Q. (By Ms. Gibson) When it came to what y'all  
3 discussed about what you intended to pay Jeff Carpenter, do  
4 you believe Jeff Carpenter was entitled to trust you?

5 A. We never talked about --

6 MR. L. FRIEDMAN: Excuse me.

7 That question's confusing. I mean, does  
8 she mean by the employment contract, 'cause she hasn't laid  
9 a foundation about any oral agreement with this witness?

10 THE COURT: She's just asking whether --  
11 objection's overruled.

12 Answer it if you can answer it.

13 THE WITNESS: Can you ask me that question  
14 again?

15 MS. GIBSON: Sure.

16 THE WITNESS: Sorry, Your Honor. I didn't  
17 mean to talk over you.

18 Q. (By Ms. Gibson) For example, you testified  
19 yesterday that you intended to pay Jeff Carpenter a bonus as  
20 the asset-sale proceeds, correct?

21 A. If and when there was money left over to pay those  
22 bonuses.

23 Q. But you intended to pay the bonus, correct?

24 A. Some amount.

25 Q. Well, you already testified that those discussions

1 about amounts, if there were any, were between Brian and  
2 Jeff Carpenter, correct?

3 A. Yes.

4 Q. Okay.

5 Do you believe Jeff Carpenter was entitled  
6 to trust your word when you said you intended to pay him a  
7 bonus out of the asset-sale proceeds?

8 A. Some amount, yes.

9 Q. And Mr. Carpenter did everything you asked of him,  
10 which was to say.

11 A. Well, I didn't ask him to sue me before the sale  
12 went through. So, no, I don't think he did everything I  
13 asked him to do.

14 Q. Jeff Carpenter's work as far as you-all needing  
15 him -- I'm -- so you're mad that Mr. Carpenter brought suit  
16 over the agreement, correct?

17 A. There was no agreement. And you asked me a  
18 question and I don't believe he did everything because -- or  
19 however you asked me. I think suing us before the sale went  
20 through, trying to get a temporary restraining order to  
21 interrupt the sale, were things that were inconsistent with  
22 anything that a good employee would do.

23 Q. But it's just not -- it's not true that  
24 Jeff Carpenter tried to interrupt the sale.

25 A. What's a TRO?

1 MR. L. FRIEDMAN: Well, Your Honor, who's  
2 testi fyi ng here?

3 MS. GIBSON: It's a question.

4 THE COURT: Ask questions.

5 Q. (By Ms. Gibson) Ul timately, Ms. Geiser -- well,  
6 I et me do thi s.

7 THE WITNESS: Your Honor, can we take a  
8 break?

9 THE COURT: I think she's about fi ni shed,  
10 but we take a break at 10:20, whi ch i s j ust a coupl e  
11 mi nutes.

12 THE WITNESS: Okay.

13 THE COURT: But she may be fi ni shed by  
14 then. We'll see.

15 MS. GIBSON: Okay.

16 Q. (By Ms. Gibson) The intent of bonusing employees  
17 out of sale proceeds was to get them to stay, correct?

18 A. The intent of talking to the employees and letting  
19 them know that if the sale went through there was upside for  
20 them was motivation for them to stay. If they chose to stay  
21 on that basis, that was up to them.

22 Q. Jeff Carpenter stayed as long as you-all needed  
23 him to, correct?

24 A. Jeff Carpenter stayed until we no longer needed  
25 him and as long as he received his annualized salary of

1 \$200,000 plus benefits.

2 Q. And that date was October 31, 2007?

3 A. On or about.

4 Q. November 1, 2007, was the transfer of management  
5 to the purchasers, correct?

6 A. Yes.

7 Q. Okay. So Jeff had done everything that you-all  
8 had asked him to do as far as staying to help make the asset  
9 sale work as of the end of the day on October 31st, 2007?

10 A. Jeff continued his employment until October 31st  
11 of 2007.

12 Q. He stayed.

13 A. He continued his employment. He continued doing  
14 his functions for Southwest Housing. He stayed on with the  
15 company. He received his paycheck for doing that.

16 Q. You-all asked him to stay, didn't you?

17 A. He stayed.

18 Q. Did you ask him to stay on to do work as needed to  
19 help make the asset sale happen?

20 A. I asked Jeff to stay and continue his role with  
21 the management company to maintain continuity for the sale  
22 process to take place.

23 Q. Okay. You asked him to stay and he stayed.

24 On -- after his work was completed, on  
25 November 1, 2007, you sent or you had someone send

1 Jeff Carpenter a proposed separation agreement in which he  
2 would have to waive all of his legal rights --

3 A. Well, I think you're --

4 Q. -- what he will be --

5 A. -- leaving out an important point, which is I was  
6 responding to something he had --

7 THE COURT: Stop. It sounds like you're  
8 going on to a different -- I thought you were wrapping up.

9 MS. GIBSON: Okay.

10 THE COURT: You're going on to a different  
11 subject. We'll take our break.

12 We'll take a 15-minute break, ladies and  
13 gentlemen. We'll see you back at 10:36.

14 (The jury exited the courtroom.)

15 (Recess taken)

16 (The jury entered the courtroom.)

17 THE COURT: Welcome back. Good morning  
18 still, ladies and gentlemen.

19 We'll continue with the trial. Our witness  
20 is Ms. Geiser. The examining attorney is Ms. Gibson. And  
21 we'll go up until noon, the noon hour, just before the noon  
22 hour before we take our next break. And that break will be  
23 an hour and 10 minutes for our lunch break.

24 So, Ms. Gibson, if you'd pick up where you  
25 left off.

1 Q. (By Ms. Gibson) Ms. Geiser, could you take a look  
2 back at Exhibit 10, please?

3 A. Yes.

4 Q. And is Exhibit 10 an accurate depiction of an  
5 excerpt from an article from an interview with you and  
6 Brian Potashnik?

7 A. Yes.

8 Q. And I realize you said you believe it's a mistake  
9 that you are referenced as a co-owner?

10 A. Right.

11 Q. Okay.

12 MS. GIBSON: Plaintiff offers Exhibit 10.

13 THE COURT: Any objection?

14 MR. L. FRIEDMAN: No objection.

15 THE COURT: Ten is admitted.

16 Q. (By Ms. Gibson) Ms. Potashnik, we had talked about  
17 that you had asked Jeff Carpenter to stay on as long as  
18 needed to help make the asset sale happen?

19 A. Yes.

20 Q. Okay. And, in exchange for staying, the carrot  
21 was a bonus out of the sale proceeds?

22 A. Potentially.

23 Q. And as we sit here today, although Jeff Carpenter  
24 stayed, it's your position now, after the fact, that  
25 Jeff Carpenter's salary was enough to cover everything; is

1 that right?

2 A. Jeff was -- the discussions, as I understand them,  
3 were that if he -- if there was proceeds remaining from the  
4 sale to distribute to employees then he would have  
5 participated in that. Other than that, he received his  
6 salary.

7 Q. Is it your position, after the fact, today, as you  
8 sit here, that Jeff's salary is all he was entitled to?

9 A. I don't know what you mean by after the fact.  
10 That was my position then and that's my position now.

11 Q. Did you tell Jeff Carpenter, when you offered him  
12 the carrot of a bonus out of the sale proceeds, if he would  
13 stay on, that you were taking the position, though, that his  
14 salary was going to cover everything and you would pay him  
15 nothing?

16 A. Like I said, the discussions were if there was  
17 proceeds left when the sale went through that he would  
18 participate in that.

19 Q. Did you ever tell Jeff Carpenter it was your  
20 belief that his salary covered his staying on, that that's  
21 all he was entitled to?

22 A. I don't remember having that conversation with  
23 Jeff.

24 Q. Okay. That's your position today, though, now  
25 that we're in a lawsuit?

1 A. I think that's always been the position.

2 Q. That's always been your position even when you  
3 were offering a carrot to bonus out of sale proceeds if he  
4 would stay? It was your position that --

5 A. I didn't offer a carrot. Discussions were had.  
6 The discussions were generally about if there were monies at  
7 the end of the day; if the sale went through and it was  
8 successful, that he would participate on some level at our  
9 discretion or at Brian's discretion. So I keep saying the  
10 same thing.

11 Q. Did you use those words with Jeff Carpenter in  
12 these discussions? Did you say that it would be at our  
13 discretion, we may or may not pay you? Did you ever tell  
14 Jeff Carpenter that while he was employed?

15 A. The discussions with Jeff were generally him  
16 asserting certain things and me saying we can't make you  
17 that deal, Jeff, we can't make that commitment. The only  
18 thing we tell you or I can tell you is at the end of the  
19 day, if there are proceeds left after the sale, that you'll  
20 participate.

21 Q. The truth is, Ms. Geiser, you didn't start backing  
22 out and saying we can't make that commitment until you had  
23 already gotten everything you needed from Jeff at the end of  
24 the day on October 31st.

25 A. The truth is that I sat at Jeff Carpenter's



1 deposition where my lawyers asked him, "Did you have a deal  
2 with Cheryl Potashnik?" And he said, "No." And my lawyer  
3 asked, "Why are you suing Cheryl Potashnik?" And the reason  
4 was because her name appears on the closing statement or on  
5 the sale agreement, and advice of counsel.

6 Jeff admitted that at his deposition that  
7 he never had a deal with me. And he never had a deal with  
8 me.

9 Q. I disagree, but Mr. Carpenter will testify, okay?

10 A. And he has.

11 Q. Well, you told Mr. Carpenter that you intended to  
12 pay him a bonus, correct?

13 A. If and when the sale went through.

14 Q. Okay.

15 THE COURT: You're asking the same  
16 questions.

17 MS. GIBSON: All right.

18 MR. L. FRIEDMAN: Thank you.

19 What number?

20 MS. GIBSON: Eleven.

21 Q. (By Ms. Gibson) Ms. Geiser, I'm handing you what's  
22 been marked Exhibit 11, going back through the timeline in  
23 this case. Do you recognize Exhibit 11 --

24 A. Yes.

25 Q. -- as a letter of intent to sell the business?

1 A. Yes.

2 Q. Okay. And the date, what is the date of the  
3 letter of intent?

4 A. October 16th, 2006.

5 Q. And at the time -- well, in looking -- in looking  
6 at Exhibit 11, who's signatures --

7 MR. L. FRIEDMAN: Your Honor, I'm going to  
8 object to the witness testifying about anything, an exhibit  
9 that has not been admitted into evidence.

10 MS. GIBSON: I'm authenticating it still.

11 THE COURT: All right.

12 Well, is there an objection to it?

13 MR. L. FRIEDMAN: Yeah, I object. It's  
14 hearsay.

15 MS. GIBSON: Well, let me offer it first.

16 THE WITNESS: The signatures are  
17 Brian Potashnik's and mine.

18 MS. GIBSON: Okay.

19 Plaintiff offers Exhibit 11.

20 THE COURT: Okay.

21 And your -- your objection is hearsay? She  
22 said she --

23 MR. L. FRIEDMAN: Hearsay, lack of  
24 foundation.

25 THE COURT: Anything else?

1 MS. GIBSON: Is that it?

2 MR. L. FRIEDMAN: No, sir.

3 THE COURT: All right.

4 MS. GIBSON: Your Honor --

5 THE COURT: Overruled. Eleven is admitted.

6 Q. (By Ms. Gibson) And at the time you and  
7 Brian Potashnik signed the letter of intent, when was the  
8 anticipated close?

9 A. This is a letter of intent, so we would have had  
10 to then negotiate the purchase and sale agreement. There  
11 was no intent at that time.

12 Q. When did you believe the sale was likely to close  
13 at that time?

14 A. Until you have a purchase and sale agreement, you  
15 can't possibly know based on the letter of intent. It's  
16 impossible.

17 Q. Did you believe that the close was likely  
18 to happen the next summer?

19 A. This is a letter of intent. There's no way to  
20 know.

21 Q. Not just based on that. I'm saying at the time  
22 y'all signed that.

23 A. I don't think there's any way to have known that.  
24 This is just a letter of intent.

25 Q. Okay, you don't think you knew at this time when

1 the sale was likely to close?

2 A. This is just a letter of intent, so --

3 Q. I understand, but I'm not asking just based on  
4 that document.

5 A. Well, you have to go to -- you have to go from  
6 letter of intent to purchase and sale agreement, and then  
7 that would dictate the closing date.

8 Q. Okay. Well, let me ask you -- let me ask you this  
9 way. Whether it was on October 16th, 2006, or at some later  
10 point, the asset sale was initially anticipated to close in  
11 summer of 2007, correct?

12 A. The purchase and sale agreement was signed in  
13 April of '07 and there's a very detailed discussion about  
14 closing and when that would occur. I don't recall there  
15 being a date certain in it. It talks about all the  
16 different conditions that have to happen before the sale can  
17 go through.

18 I know that as early as June of '07 there  
19 was already the first amendment to the contract. So I don't  
20 know that -- I can't sit here today and say that I believed  
21 in April of '07, based on all the consents and various  
22 things that had to happen to be able to close, that it could  
23 possibly have closed in the summer.

24 Q. My question was summer.

25 A. Yeah. I can't sit here today and say I

1 anticipated being in the summer. I guess that was probably  
2 our hope.

3 Q. I thought you said April.

4 A. It was signed in April 2007. I think the hope was  
5 that it would close by the summer, but I don't know that  
6 there was a date certain in the contract.

7 Q. I'm not asking you about a date certain. I'm just  
8 asking when you-all initially anticipated the deal would  
9 close.

10 MR. L. FRIEDMAN: Asked and answered,  
11 Your Honor.

12 THE COURT: Overruled.

13 THE WITNESS: Again, I think the hope was  
14 that it would close over the summer, but there was a lot of  
15 things that needed to happen in order for that sale to go  
16 through. So it's very detailed once we got to the purchase  
17 and sale agreement what things had to happen in order for  
18 the sale to go through. And as early as June of '07 there  
19 was already an amendment. I believe there was another one  
20 in July. So it became clear pretty early on that the  
21 closing was going to drag out.

22 Q. (By Ms. Gibson) Ms. Geiser, do you recall being at  
23 your deposition?

24 A. Yes.

25 MS. GIBSON: Mr. Friedman, Page 85,

1 Line 16. Let me know when you're there.

2 (Pause)

3 MR. L. FRIEDMAN: I'm here.

4 Q. (By Ms. Gibson) Ms. Geiser, at your deposition I  
5 asked, "Going back in time, the asset sale to Cascade was  
6 initially anticipated to close in spring or early summer of  
7 2007, correct?" And you say, "I don't know if it would have  
8 been spring, but summer."

9 A. Yeah. I stand corrected because I was unclear, I  
10 guess, on the dates at that time. The actual sale contract  
11 wasn't executed until the spring of '07, so it couldn't have  
12 closed in the spring. And the hope was, yeah, that it would  
13 have closed by the summer.

14 Q. Okay.

15 So, initially, you-all anticipated close in  
16 summer of 2007. And so, less than a year --

17 MR. L. FRIEDMAN: I'm going to object. It  
18 misstates the witness's prior testimony.

19 MS. GIBSON: (Unintelligible).

20 MR. L. FRIEDMAN: Misstates the witness's  
21 prior testimony.

22 MS. GIBSON: I haven't even asked the whole  
23 question.

24 THE COURT: She hasn't asked the question.  
25 Ask your question.

1 Q. (By Ms. Gibson) And so, the time between the  
2 letter of intent to sell and the initial anticipated close  
3 date was less than a year, correct?

4 A. The time that the letter of intent was told to  
5 when we thought the sale could potentially go through was  
6 less than a year?

7 Q. Right.

8 A. That's probably true.

9 Q. And in the letter of intent it identifies the  
10 seller as multiple entities and persons. Collectively, all  
11 Southwest Housing entities or persons affiliated therewith,  
12 correct?

13 A. Yes.

14 Q. Okay. And were you one of the individual persons  
15 referenced?

16 A. Through my entity, yes.

17 Q. Okay. And is that why you -- and that's why you  
18 signed the letter of intent?

19 A. I believe that's why they had me sign the letter  
20 of intent, yes, because some of the entities listed on  
21 Schedule A were owned by my entity.

22 MS. GIBSON: Mr. Friedman, this is 12.

23 MR. L. FRIEDMAN: Thank you.

24 Q. (By Ms. Gibson) I'm handing you Plaintiff's  
25 Exhibit 12. Do you recognize that document?

1 A. Yes.

2 Q. And is -- does Exhibit 12 appear to be an accurate  
3 copy of an excerpt from the purchase and sale agreement?

4 A. An excerpt from the purchase and sale agreement?

5 Q. Well, the actual purchase and sale agreement had  
6 lots of schedules and attachments, and so an excerpt in the  
7 sense if it's just a purchase and sale --

8 A. The main body of the agreement?

9 Q. Right.

10 A. Does --

11 Q. Does it appear to be an accurate copy?

12 A. I'm going to take your word for it.

13 Q. Well, does it appear to you to be an accurate copy  
14 of the agreement?

15 A. I mean, I can sit here and read the agreement, but  
16 I'm going to take your word for it that it's an accurate  
17 copy of the agreement.

18 Q. Okay.

19 MS. GIBSON: Plaintiff offers Exhibit 12.

20 MR. L. FRIEDMAN: Take the witness on voir  
21 dire?

22 THE COURT: No.

23 Do you have an objection to it?

24 MR. L. FRIEDMAN: Well, it's lack of  
25 foundation and hearsay. She didn't sign this agreement and



1       i t' s i ncomplete.

2                   THE COURT:   A l l   r i g h t.   S h e   s a y s   s h e   a g r e e s  
3       t o   t a k e   M s.   G i b s o n' s   w o r d   f o r   i t   t h a t   i t   w a s   a c c u r a t e.

4                   MR. L. FRIEDMAN:   I t' s i ncomplete,  
5       Y o u r   H o n o r.

6                   THE COURT:   I t' s   a d m i t t e d.

7                   MR. L. FRIEDMAN:   B e s t   e v i d e n c e   r u l e.

8                   THE COURT:   W h a t   i s   b e t t e r?   Y o u   m e a n   t h e  
9       e n t i r e   --

10                  MR. L. FRIEDMAN:   W e l l ,   a   c o m p l e t e   d o c u m e n t  
11       i s   b e t t e r   t h a n   s e l e c t e d   --

12                  THE COURT:   W e l l ,   o f   c o u r s e ,   b u t   y o u  
13       d o n' t   --   o v e r r u l e d.

14                  Q.    (B y   M s.   G i b s o n)   M s.   G e i s e r ,   i f   y o u' l l   t a k e   a   l o o k  
15       a t   P a g e   --   t h e   p a g e   t h a t   e n d s   i n   3 2 2   o n   t h e   b o t t o m   r i g h t.

16                  A.    S a y   t h a t   a g a i n.

17                  Q.    Y o u   s e e   t h a t   t h e r e   a r e   B a t e s   n u m b e r s   i n   t h e   b o t t o m  
18       r i g h t   o f   t h e   d o c u m e n t?

19                  A.    O k a y.

20                  Q.    O k a y.   I f   y o u' l l   t u r n   t o   t h e   p a g e   t h a t   i s   3 2 2.

21                  A.    O h ,   y e a h.   I t' s   t h e   s i g n a t u r e   p a g e?

22                  Q.    Y e s.

23                               A n d   y o u   s e e   o n   t h e   s i g n a t u r e   p a g e   o f   t h e  
24       p u r c h a s e   a n d   s a l e   a g r e e m e n t   i t   h a s   t h e   --   t h e   t o p   s i g n a t u r e s  
25       a r e   t h e   p u r c h a s e r ,   c o r r e c t ,   C a s c a d e ,   A f f o r d a b l e   H o u s i n g?

1 A. Yes.

2 Q. Okay. And if we go down you see that the seller's  
3 signature --

4 A. Yes.

5 Q. -- is Brian Potashnik?

6 A. Uh-huh.

7 Q. And you see that he is the authorized agent for  
8 each of the sellers that are listed on the schedule?

9 A. Listed on Schedule A hereof.

10 Q. Right.

11 So, is -- is that accurate Brian Potashnik,  
12 in connection with the asset sale, was acting as the  
13 authorized agent for the sellers?

14 A. Yeah. I mean, I guess that's what the lawyers  
15 worked out. I -- I'm -- yes, that's what it says.

16 Q. And you were one of the persons who was a seller,  
17 as we just saw in the LOI --

18 A. Correct.

19 Q. -- through CLG, correct?

20 A. Yes.

21 Q. Yes? Okay.

22 And so, in connection with the sale, that  
23 would mean Brian Potashnik was also acting as the authorized  
24 agent for you through your company?

25 A. I guess. I don't know how the lawyers came to

1 that, but that must have been what they came up with.

2 Q. And the date for the purchase and sale agreement  
3 is what?

4 A. April 30th, 2007.

5 Q. And PSA is a term sometimes used as an  
6 abbreviation for purchase and sale agreement?

7 A. Yes.

8 Q. And at the time -- let me strike that.

9 MS. GIBSON: Thirteen.

10 MR. L. FRIEDMAN: Thank you.

11 THE WITNESS: It gets progressively colder  
12 in here. It's freezing, right?

13 THE COURT: We'll work on that.

14 THE WITNESS: It starts off hot and then  
15 it gets cold.

16 Q. (By Ms. Gibson) I'm handing you Exhibit 13. Does  
17 Exhibit 13 appear to be an accurate copy of Schedule A  
18 excerpt from the Southwest/Cascade seller asset purchase or  
19 sale agreement?

20 MR. L. FRIEDMAN: Take the witness on voir  
21 dire, Your Honor?

22 THE COURT: No.

23 MR. L. FRIEDMAN: There can't be two  
24 Schedule A's to the same document.

25 THE COURT: She hasn't answered the

1 question yet. Let Ms. Gibson ask her questions.

2 THE WITNESS: I'm going to, again, take  
3 your word for it that this is an accurate copy of the  
4 Schedule A to the Southwest/Cascade seller asset purchase  
5 price for --

6 MR. L. FRIEDMAN: Your Honor, this is  
7 hearsay, violates the best evidence rule, and it would be  
8 misleading if we don't have the entire document and just one  
9 schedule.

10 THE COURT: Well, you can offer the entire  
11 document when you do your direction examination.

12 MR. L. FRIEDMAN: Okay.

13 I don't even know what this is, Your Honor.  
14 I'm looking at this --

15 THE COURT: Well, y'all come over here.

16 (Sidebar conference held)

17 THE COURT: Vikki, we'll -- the objection  
18 to Exhibit 13 is overruled. It's admitted. And we'll put  
19 the objection on the record later.

20 MS. GIBSON: Okay.

21 MR. L. FRIEDMAN: Now, Your Honor?

22 THE COURT: No, later, once the jury leaves  
23 at the end of the day.

24 You already have the sub -- you already  
25 have the legal objections on the record. What she meant by

1 what you told me there we'll put on the record later.

2 MS. GIBSON: Okay.

3 MR. L. FRIEDMAN: Okay. Thanks.

4 Q. (By Ms. Gibson) All right. Ms. Geiser, Schedule A  
5 lists various sellers, correct?

6 A. Yes.

7 Q. Okay. And you see that Brian Potashnik is one of  
8 the sellers?

9 A. Yes.

10 Q. And you see that Southwest Housing Development is  
11 also one of the sellers?

12 A. Correct.

13 Q. And you see that Southwest Housing Management  
14 Corporation is also one of the sellers?

15 A. Yes.

16 Q. And you testified a moment ago that you were also  
17 a seller in that some of the assets through one of your  
18 companies was also part of the asset sale?

19 A. Yes.

20 Q. So all of the defendants in this case were sellers  
21 in the asset sale, correct?

22 A. I'm not sure about Affordable Housing, but it  
23 could have been.

24 Q. Affordable Housing Construction?

25 A. Correct.

1 Q. I believe if you'll take a look through you'll see  
2 that Affordable Housing Construction is one of the sellers.

3 A. Oh, yes.

4 Q. You see that?

5 A. Uh-huh.

6 Q. Okay. So all of the defendants in this case were  
7 sellers in the asset sale, correct?

8 A. Well, I was a seller indirectly through my entity.  
9 I don't know that I'm ever listed by name. I'd have to go  
10 through this entity by entity.

11 Q. Your name is listed in footnotes, I believe.

12 A. Right, but it's not listed as a seller, A, B, C,  
13 D, E.

14 Q. But you were effectively a seller because a  
15 company you owned, a sort of interest that you owned --

16 A. Seller is a defined term.

17 Q. -- selling --

18 A. I personally was not a seller. I'm a footnote as  
19 an owner of the seller.

20 Q. And, ultimately, at the end of the day, who got  
21 the money in connection with your company?

22 A. The company, CLG.

23 Q. But you -- who were the employees of CLG?

24 A. Myself.

25 Q. Okay. No one else?

1 A. Correct.

2 Q. You were the sole owner?

3 A. Yes.

4 Q. Okay.

5 Ultimately, any money that CLG got went to  
6 you, correct?

7 A. Ultimately, it went to the company. How -- if  
8 it ever went to me, I don't recall.

9 Q. Well, no one else was earning money from the  
10 company but you, correct?

11 A. It went to the company.

12 Q. Well, who got the money from the company?

13 A. Either it was spent by the company or I got it.

14 Q. And you testified earlier that the reason you  
15 hadn't signed the letter of intent is you were one of the  
16 persons that was considered to be a seller --

17 A. No. I --

18 Q. -- under the letter of intent?

19 A. No. I was not a person. I was the owner of an  
20 entity that owned a G -- general partnership interest. So  
21 that was my connection.

22 Q. Is it accurate to say that you financially  
23 benefited from funds received from the asset sale?

24 A. Yes.

25 MR. L. FRIEDMAN: Thank you.

1 MS. GIBSON: You're welcome.

2 Q. (By Ms. Gibson) Ms. Geiser, I'm handing you  
3 Plaintiff's Exhibit 14. Do you recognize Exhibit 14 as an  
4 Email that you sent to Sara Reidy and Jeff Carpenter?

5 A. Yes.

6 MS. GIBSON: Plaintiff offers Exhibit 14.

7 THE COURT: Any objection?

8 MR. L. FRIEDMAN: No objection, Your Honor.

9 THE COURT: Fourteen is admitted.

10 Q. (By Ms. Gibson) And in Exhibit 14, the Email to  
11 Sara Reidy and Jeff Carpenter, says celebration time, on  
12 July 17, 2007, correct?

13 A. Yes.

14 Q. What's going on at that time that you're  
15 celebrating?

16 A. I don't really recall.

17 Q. Do you recall that at that time -- do you recall  
18 that at some point it looks like the asset sale wasn't going  
19 to go through and then it was back on track with a payment  
20 to the sellers?

21 A. That's probably true.

22 Q. Okay. And is that -- is that what you believe  
23 that Email is talking about?

24 A. It might have been.

25 Q. And do you recall you-all celebrated with



1 champagne in the office?

2 A. You asked me that at my deposition. I don't  
3 remember that.

4 Q. Okay.

5 And of all the people at the organization  
6 from Affordable Housing Construction, Southwest Housing  
7 Management, and Southwest Housing Development, the  
8 celebration time Email you sent was to just Sara Reidy and  
9 Jeff Carpenter.

10 A. They may have been the only ones left in the  
11 office. It was 4:48. Yeah.

12 Q. Okay. They worked -- what are the office hours?  
13 Do you think --

14 A. Whatever they were.

15 Q. What?

16 A. Whatever they were, the people worked the hours  
17 that they worked. I don't know that we had, necessarily,  
18 set office hours.

19 Q. Well, Jeff Carpenter was the executive vice  
20 president of Southwest Housing Management, correct?

21 A. Yes.

22 Q. Sara Reidy was the executive vice president of  
23 Southwest Housing Development, correct?

24 A. If that was her title, I don't recall. It could  
25 be.

1 Q. Okay.

2 Other than, perhaps, the CFO and yourself  
3 and Brian Potashnik, they were the highest level employees  
4 of their respective organizations?

5 A. And Deepak Sulakhe.

6 Q. Okay.

7 Do you think everyone else was gone by  
8 4:48?

9 A. Well, Deepak might have been out of town. He was  
10 a developer. He could have been traveling. I don't know.

11 Q. Let me just ask you this. Of all the people in  
12 all the companies, why did you choose Jeff Carpenter and  
13 Sara Reidy to celebrate with concerning the asset sale?

14 A. I don't know. I don't really remember that Email,  
15 I don't remember celebrating, so I really can't go to my  
16 frame of mind at the time.

17 Q. Okay.

18 Would you take a look back at Exhibit 12,  
19 please? And if you'll look at Article 1.3 on Page 3.

20 MR. L. FRIEDMAN: Which one?

21 MS. GIBSON: 1.3, earnest money. Okay?

22 MR. L. FRIEDMAN: Which page again?

23 THE WITNESS: Three.

24 MS. GIBSON: Three.

25 Q. (By Ms. Gibson) Tell me when you've got a chance

1 to read it.

2 A. Which part? Do you want me to read all of 1.3?

3 Q. Yes.

4 A. Okay.

5 (Witness complied)

6 A. Okay.

7 Q. Okay.

8 This paragraph is about earnest money,  
9 correct, and --

10 A. Paragraph 1.3 is titled earnest money.

11 Q. Okay, is that different from it being earnest  
12 money?

13 A. It's titled earnest money.

14 Q. Okay.

15 And you see Paragraph 1.3, earnest money,  
16 says that the earnest money shall either be applied against  
17 the purchase price at closing or, if this agreement is  
18 terminated prior to closing, paid to seller or refunded to  
19 purchaser in accordance with the agreement. Correct?

20 A. That's what it says, yes.

21 Q. Okay. And so, if the asset sale actually goes  
22 through and closes, anything that's earnest money is applied  
23 toward the purchase price, correct?

24 A. Yes.

25 MR. L. FRIEDMAN: Thank you.

1 Q. (By Ms. Gibson) Ms. Geiser, I'm handing you what's  
2 been marked Plaintiff's Exhibit 15. Does that appear to you  
3 to be an accurate copy of the first amendment to escrow  
4 agreement?

5 A. I'll take your word for it.

6 MR. L. FRIEDMAN: Hearsay, lack of  
7 foundation.

8 MS. GIBSON: Well, I haven't offered  
9 it yet.

10 Plaintiff offers Exhibit 15.

11 THE COURT: The objections are on the  
12 record. Overruled. Fifteen is admitted.

13 Q. (By Ms. Gibson) Okay. And you see in Exhibit 15  
14 that the escrow agent is authorized and instructed to  
15 release 1.85 million of the escrow funds to seller?

16 A. Yes.

17 Q. And this was the first payment to sellers in  
18 connection with the asset sale?

19 A. I don't know how to characterize this because the  
20 asset sale hadn't -- the sale of the assets hadn't gone  
21 through as of July 16, 2007. I believe what happened was  
22 Brian negotiated for seller to release an amount of money in  
23 advance of the sale going through in order to ensure that  
24 the closing would happen. That's generally how I remember  
25 it.

1 Q. But this is -- ultimately, the sale did close and  
2 go through, correct?

3 A. Yeah, but parts of it didn't go through for  
4 another year, so --

5 Q. But, ultimately, the asset sale happened?

6 A. The sale of -- the sale of 40 -- or 54 assets  
7 happened, yeah.

8 Q. Okay. And this is the first -- 1.85 million is  
9 the first payment to seller?

10 A. I think it's an advance, but the asset sale hadn't  
11 happened. So, again, I can't give you an answer other than  
12 I don't remember how this was characterized.

13 Q. It is paid in advance of the closing, Ms. Geiser,  
14 but it was still the first payment to sellers that was  
15 ultimately applied to the purchase price, correct?

16 A. I would say that's accurate.

17 Q. Okay.

18 In other words, the sellers had to put up  
19 more earnest money and pay that to you, correct -- or, I'm  
20 sorry -- pay that to the sellers.

21 THE COURT: To the buyer.

22 MS. GIBSON: I'm sorry?

23 THE COURT: To the seller or the buyer?

24 MS. GIBSON: To the seller.

25 Did I say buyer?

1 THE COURT: No. I misunderstood.

2 MS. GIBSON: Okay.

3 THE WITNESS: This amount was paid to the  
4 seller.

5 Q. (By Ms. Gibson) Okay. And that was earnest money.

6 I'm going to -- I'm going to hand to you  
7 Plaintiff's 16 and see if this maybe helps you.

8 A. Okay.

9 MR. L. FRIEDMAN: Thank you.

10 Q. (By Ms. Gibson) I'm handing you Plaintiff's  
11 Exhibit 16. Does Exhibit 16 appear to be an accurate copy  
12 of Amendment 1 to the purchase and sale agreement?

13 A. I'll take your word for it.

14 MS. GIBSON: Plaintiff offers Exhibit 16.

15 THE COURT: Same?

16 MR. L. FRIEDMAN: Hearsay and lack of  
17 foundation, Your Honor.

18 THE COURT: All right. Overruled. Sixteen  
19 is admitted.

20 Q. (By Ms. Gibson) And does anything in Amendment 1  
21 help you?

22 A. I'm going to have to read it.

23 (Witness reading)

24 Q. Ms. Geiser, let me go ahead and give you 17.  
25 Whoops, this is the second amendment to escrow agreement.

1 Does anything in that document help you?

2 A. I need to read it and you just --

3 Q. Okay.

4 A. -- suggested you're going to give me something  
5 else. So, is there something else?

6 Q. Oh, I -- this is the -- the next document is  
7 another amendment to the escrow agreement, so I apologize.

8 A. Well, these are technical, legal documents that I  
9 haven't looked at in a long time, so I'm going to have to  
10 read through it if you're going to question me on this.

11 Q. Okay.

12 Do you have any reason to doubt that the  
13 payment of 1.5 million reflected on this -- on Plaintiff's  
14 15 is earnest money that was applied to the purchase price?

15 A. One is an amendment to the purchase and sale  
16 agreement, and then the other document is amendment to the  
17 escrow agreement. So I need to look at the document to make  
18 sure we're talking about the same thing.

19 Q. This is 15. Do you have Exhibit 15 in front of  
20 you?

21 A. I do.

22 Q. Okay.

23 A. That's the first amendment to escrow agreement.

24 Q. Do you have any reason to doubt that the  
25 1.85-million payment was earnest money that was ultimately

1 applied towards the purchase price?

2 A. Do I have any reason to doubt it?

3 Q. Right.

4 A. I think that's generally what happened.

5 Q. Okay.

6 And the date, the effective date of this is  
7 July 16, 2007?

8 A. Yes.

9 Q. And your Email in Exhibit 14, celebration time, is  
10 dated the next day, July 17.

11 A. Okay.

12 Q. Okay. Does that help you remember that that was  
13 the day of the first payment received in connection with the  
14 asset sale?

15 A. That's where the buyer, if my memory serves,  
16 released hard money into the transaction, yeah.

17 Q. I'm handing you Exhibit 17. Does Exhibit 17  
18 appear to be an accurate copy of the second amendment to  
19 escrow agreement?

20 A. Yes.

21 Q. Okay.

22 MS. GIBSON: And plaintiff offers --

23 THE WITNESS: Again, I'm taking your word  
24 for it for all of these.

25 MS. GIBSON: Okay.



1                   Plaintiff offers Exhibit 17.

2                   THE COURT: Okay.

3                   Same objection?

4                   MR. L. FRIEDMAN: Same objections,  
5 Your Honor.

6                   THE COURT: All right. Overruled.  
7 Seventeen is admitted.

8                 Q. (By Ms. Gibson) And in the second amendment on  
9 Exhibit 17 it says that the escrow agent is authorized and  
10 instructed to release \$925,000 of escrow funds to seller,  
11 correct?

12                A. Yes.

13                Q. And that is also earnest money that was ultimately  
14 applied to the purchase price?

15                A. I guess, yeah.

16                Q. Okay. And this is August 15, 2007?

17                A. Yes.

18                Q. I'm handing you Exhibit 18.

19                         MR. L. FRIEDMAN: Thank you.

20                Q. (By Ms. Gibson) Does Exhibit 18 appear to be an  
21 accurate copy of the third amendment to the escrow  
22 agreement?

23                A. I'll take your word for it.

24                         MS. GIBSON: Plaintiff offers Exhibit 18.

25                         THE COURT: Same objection?

1 MR. L. FRIEDMAN: Same objections,  
2 Your Honor.

3 THE COURT: All right. Overruled.  
4 Eighteen is admitted.

5 Q. (By Ms. Gibson) And in the third amendment this is  
6 dated September 17, 2007, correct?

7 A. Yes.

8 Q. And here another \$925,000 is being paid to seller?

9 A. Correct.

10 Q. And that was also earnest money that was  
11 ultimately applied toward the purchase price?

12 A. I think so.

13 Q. Ms. Geiser, do you know the total amount of  
14 revenue that was paid to sellers?

15 A. Revenue?

16 Q. Revenue.

17 MR. L. FRIEDMAN: Object to the term  
18 "revenue".

19 THE COURT: You're talking about the  
20 revenue of what?

21 MS. GIBSON: In connection with the asset  
22 sale.

23 Q. (By Ms. Gibson) Do you know the total amount of  
24 revenue to sellers?

25 A. Can you define revenue?

1 Q. Revenue would be monies paid to seller in  
2 connection with the asset sale before any offsets; for  
3 example, for closing costs.

4 A. How much total money was paid to all the sellers  
5 in the asset sale? Is that your question?

6 Q. Yeah. Yes.

7 A. I think it was 36 million, but I could be wrong.

8 Q. Okay.

9 And so, I'm going to keep going through  
10 these so we can see the exact numbers, okay, Ms. Geiser?

11 A. Okay.

12 Q. Ms. Geiser, I'm handing you Plaintiff's Exhibit  
13 19. Does that appear to be an accurate copy of the fourth  
14 amendment to the escrow agreement?

15 A. I'm taking your word for it.

16 MS. GIBSON: Plaintiff offers Exhibit 19.

17 MR. L. FRIEDMAN: Same objections,  
18 Your Honor.

19 THE COURT: All right. Overruled and  
20 admitted.

21 Q. (By Ms. Gibson) And do you see in Exhibit 19 that,  
22 again, another 925,000 is being paid to seller?

23 A. Yes.

24 Q. And that is also earnest money that will  
25 ultimately be applied toward the purchase price?

1 A. I believe so, yes.

2 Q. Okay.

3 And the date on this is October 29, 2007?

4 A. Yes.

5 Q. I'm handing you Exhibit 20.

6 MR. L. FRIEDMAN: Thank you.

7 Q. (By Ms. Gibson) Does Exhibit 20 appear to be an  
8 accurate copy of the fifth amendment to the escrow  
9 agreement?

10 A. I'll take your word for it.

11 Q. Okay. And in the fifth amendment to the escrow  
12 agreement --

13 MS. GIBSON: Oh, plaintiff offers Exhibit  
14 20.

15 MR. L. FRIEDMAN: Same objections,  
16 Your Honor.

17 THE COURT: All right. Y'all come over  
18 here just a minute.

19 (Sidebar conference held)

20 Q. (By Ms. Gibson) Ms. Geiser, I'm just going to hand  
21 you a stack and try to -- so we can get these totals.

22 MS. GIBSON: You know what, Your Honor, why  
23 don't I do this, just in the interest of time. I'll move to  
24 a different topic.

25 THE COURT: Okay.

1 MS. GIBSON: And I'll gather these together  
2 over -- over the next break.

3 THE COURT: Okay.

4 MS. GIBSON: Speed it up.

5 Q. (By Ms. Gibson) Ms. Geiser, do you recall that by  
6 the end of October -- October 31, 2007 -- that Southwest  
7 Housing Management had requested a backup of  
8 Jeff Carpenter's laptop?

9 A. I don't remember all the (unintelligible) about  
10 Jeff's laptop.

11 Q. Okay. But that would have been the last day y'all  
12 needed him, October 31, 2007?

13 MR. L. FRIEDMAN: Thank you. What number  
14 is this?

15 MS. GIBSON: Twenty-one.

16 Q. (By Ms. Gibson) Correct?

17 A. I think I can agree with you that the last day of  
18 Jeff's employment was somewhere around October 31st.

19 Q. I'm handing you what's been marked Plaintiff's  
20 Exhibit 21. Does Exhibit 21 appear to be an accurate copy  
21 of the consulting and asset management services agreement?

22 A. Yes. I'll take your word for it.

23 Q. Okay.

24 MS. GIBSON: Plaintiff offers Exhibit 21.

25 THE COURT: Any objection?

1 MR. L. FRIEDMAN: Your Honor, I'm going to  
2 say hearsay and lack of foundation and relevance.

3 THE COURT: All right. Overruled then.  
4 Twenty-one is admitted.

5 Q. (By Ms. Gibson) And the date of the agreement is  
6 November 1, 2007?

7 A. Yes.

8 Q. And the gist of this agreement is to transfer  
9 management function over to the purchaser?

10 A. Yes. The buyer's property management company was  
11 assuming day-to-day management -- management functions.

12 Q. Do you recall having a meeting earlier in the year  
13 with Jeff Carpenter in which you-all just were dis -- you  
14 and Jeff Carpenter were discussing that the annual bonuses  
15 were separate from the asset-sale proceeds?

16 MR. L. FRIEDMAN: What year?

17 THE COURT: Earlier.

18 MS. GIBSON: Earlier in the year.

19 THE COURT: Of 2007.

20 MR. L. FRIEDMAN: Of 2007 or this year?

21 THE COURT: That's up to you. His  
22 objection is your question's ambiguous.

23 MR. L. FRIEDMAN: Ambiguous and vague.

24 MS. GIBSON: As to which year, sure.

25 Q. (By Ms. Gibson) Ms. Geiser, do you remember

1 meeting with Jeff in the time frame of May 16, 2007, where  
2 you were meet -- to meet with Jeff and Brian about a  
3 sales-proceeds bonus and annual bonuses?

4 A. I generally remember there was a meeting about  
5 bonuses.

6 Q. And during that meeting, do you recall saying to  
7 Jeff, leaning over the table and saying "I would never screw  
8 you" or words to that effect concerning the bonuses?

9 A. I don't remember saying it on that date. I do  
10 remember telling Jeff that I would never screw him. And  
11 it never was my intention to screw him and I don't believe I  
12 have screwed him.

13 Q. Well, the context in which you looked Jeff in the  
14 eye and said I will never screw you, the topic of discussion  
15 was the bonuses owed to Jeff Carpenter, correct?

16 A. Probably.

17 Q. And those bonuses have not been paid?

18 A. And they weren't agreed to.

19 Q. So do you think you honored your word to  
20 Jeff Carpenter that you would never screw him on the annual  
21 bonuses and the sales-proceeds bonus?

22 A. Yes.

23 Q. How so?

24 A. When Jeff left the company I offered him an  
25 additional hundred and fifty thousand dollars in exchange

1 for -- as severance. He was offered that in exchange for  
2 signing a separation agreement. He chose not to sign that  
3 and he didn't take the money.

4 And then had the sale gone through and Jeff  
5 hadn't sued us prior to the sale going through, I believe  
6 that he would have gotten some amount of bonus at our  
7 discretion at that time. But he chose to not wait till the  
8 sale went through and proactively sue us. So, no, I don't  
9 believe I screwed Jeff.

10 Q. Jeff Carpenter did not bring suit until you  
11 effectively told him to go jump in a lake on bonuses,  
12 correct?

13 A. That's not what I told him.

14 MR. L. FRIEDMAN: Objection, argumentative.

15 Excuse me.

16 Argumentative.

17 THE COURT: Sustained.

18 Rephrase the question.

19 Q. (By Ms. Gibson) You had already informed  
20 Jeff Carpenter that he would not be receiving an annual  
21 bonus or a sales-proceeds bonus by the time he filed suit.

22 A. I don't know that that's true.

23 Q. You told him that he had no rights.

24 A. You're taking my comments out of context, so we  
25 can go through that whole Email that you're talking about;



1 that you and I both know you're talking about.

2 Q. Email? I don't know what you're talking about.  
3 You mean the telephone transcript?

4 A. Or the call, yeah. The recorded conversation.

5 THE WITNESS: Your Honor, I really need to  
6 use the restroom.

7 THE COURT: Okay. We'll take a -- we'll  
8 take a 10-minute break, ladies and gentlemen.

9 (Recess taken)

10 (The jury entered the courtroom.)

11 THE COURT: Welcome back. Good morning  
12 still, ladies and gentlemen.

13 We'll go about 15 more minutes till about 5  
14 after 12:00, and we'll take our lunch break then.

15 And we'll ask Ms. Gibson to pick up where  
16 she left off.

17 Q. (By Ms. Gibson) Ms. Geiser, I'm handing you  
18 Exhibit 22.

19 A. Okay.

20 MR. L. FRIEDMAN: Which one is that?

21 MS. GIBSON: This is -- did I not give you  
22 one already?

23 MR. L. FRIEDMAN: You may have.

24 MS. GIBSON: Okay. I'll give you another  
25 copy.

1 MR. L. FRIEDMAN: Thank you.

2 Q. (By Ms. Gibson) Ms. Geiser, do you recognize  
3 Exhibit 22 as an Email from Keith Jones to Jeff Carpenter on  
4 which you are copied?

5 A. Yes.

6 Q. And Keith Jones is attaching a separation  
7 agreement?

8 A. Correct.

9 Q. And the date on this document --

10 MS. GIBSON: Plaintiff offers --

11 Q. (By Ms. Gibson) Does this appear to be an accurate  
12 copy of the Email and separation agreement that was sent to  
13 Jeff?

14 A. I'll take your word for it.

15 MS. GIBSON: Plaintiff offers Exhibit 22.

16 MR. L. FRIEDMAN: I have no problem with  
17 the cover sheet --

18 THE COURT: All right.

19 MR. L. FRIEDMAN: -- demonstrating that  
20 Keith Jones sent a form to Mr. Carpenter --

21 THE COURT: Right.

22 MR. L. FRIEDMAN: -- but I think we covered  
23 this in a limine that we're not going to publish --

24 THE COURT: Right.

25 MR. L. FRIEDMAN: -- Mr. Jones.

1 THE COURT: Come over here.

2 (Sidebar conference held)

3 MR. L. FRIEDMAN: All the separation  
4 agreements look the same to me.

5 THE COURT: Right.

6 Twenty-two is admitted.

7 MR. L. FRIEDMAN: No objection, Your Honor.

8 Q. (By Ms. Gibson) And the date on this Email is  
9 November 1, 2007?

10 A. Yes.

11 Q. After 5:00?

12 A. Yes. 5:22 p.m.

13 Q. And so, this is the day after Jeff Carpenter had  
14 completed everything y'all needed him to do for y'all as far  
15 as staying on to help with the asset sale, correct?

16 A. This is the day after Jeff's employment  
17 terminated. He stopped working and we stopped paying him.

18 Q. But this is the day after you-all had received  
19 from Jeff Carpenter everything that y'all needed from him as  
20 far as him staying on to help make the asset sale happen.

21 A. This was the day after --

22 MR. L. FRIEDMAN: Asked and answered,  
23 Your Honor.

24 A. -- his last day of employment.

25 Q. (By Ms. Gibson) When was the last day that you

1 needed Jeff Carpenter to stay on to help with the asset  
2 sale?

3 A. On the last day of his employment.

4 Q. You recall the management transition was dated  
5 November 1, correct?

6 A. Yes.

7 Q. And you didn't need Jeff to stay on once that  
8 transition was in place, correct?

9 A. Correct.

10 Q. So the last day that you needed Jeff to stay on  
11 was October 31st, 2007, correct?

12 A. The last date of Jeff Carpenter's employment was,  
13 I guess, October 31st, 2007.

14 Q. Okay, but my question is October 31, 2007, was  
15 also the last day that you-all needed Jeff to stay on to  
16 help through the asset sale?

17 A. Jeff's role was executive vice president of the  
18 management company. I characterize this as the day after  
19 the last day of Jeff's employment.

20 Q. Is there a reason you don't want to answer the  
21 last day that you didn't need anything from Jeff  
22 Carpenter --

23 MR. L. FRIEDMAN: Argumentative.

24 Q. (By Ms. Gibson) -- as far as helping with the  
25 asset sale?

1 MR. L. FRIEDMAN: Argumentative and asked  
2 and answered.

3 THE COURT: Overruled.

4 THE WITNESS: I think you're putting words  
5 in my mouth.

6 And the last day of Jeff's employment as  
7 executive vice president of the management company where he  
8 had a variety of roles was October 31st, 2007. Management  
9 transitioned to Pinnacle on or around November 1st, 2007.

10 Q. (By Ms. Gibson) Okay. To back up, you asked Jeff  
11 to stay on, correct?

12 A. Jeff's employment continued until the management  
13 transition took place.

14 Q. Because that's the last day you needed him,  
15 correct?

16 A. That's the last day of his employment.

17 THE COURT: You're asking the same  
18 question. You're not going to agree to use the same words.

19 Q. (By Ms. Gibson) Was -- was Jeff needed after  
20 October 31st, 2007?

21 A. No.

22 Q. Okay. So this is happening the first day that  
23 defendants no longer need Jeff Carpenter to stay on,  
24 correct?

25 A. It's happening the day after the last day of

1 Carpenter's employment.

2 Q. And that's after you got all the work you needed  
3 out of Jeff, correct?

4 A. I'm not going to use your words.

5 Jeff Carpenter's last day of employment  
6 with Southwest Housing Management was October 31st of 2007.  
7 That's the last day he received a paycheck or pay and that  
8 was the last day he worked.

9 Q. And what you are sending Jeff Carpenter, now that  
10 his work is done, is called a separation agreement, correct?

11 A. That is what Keith is sending him.

12 Q. Well, someone directed Keith Jones to send this to  
13 Jeff Carpenter.

14 A. I don't really remember seeing this agreement.  
15 It's unexecuted, so I really can't say anything about  
16 it other than this is an Email from Keith to Jeff. I am  
17 copied and this is attached. Keith was our CFO. I didn't  
18 handle everything.

19 Q. You were -- you were copied on the Email  
20 forwarding this document. Did you object to it being sent  
21 to Jeff?

22 A. I don't remember this document. I remember I'm  
23 authenticating this Email. I don't necessarily remember  
24 this document being attached to it.

25 Q. Do you recall --

1           A.    I'm taking your word for it that this was the  
2 attachment.

3           Q.    You see that the separation agreement covers  
4 Southwest Housing Management, Affordable Housing  
5 Construction, and Southwest Housing Development and  
6 Jeff Carpenter?

7           A.    I see that this draft agreement that you say was  
8 attached to the Email states those things.

9           Q.    Okay. And you see that what Jeff is being offered  
10 in this is wages earned through the termination date?

11          A.    Uh-huh. Yes.

12          Q.    Okay.

13                               And his last day of employment was actually  
14 November 2nd, 2007.

15          A.    Okay.

16          Q.    Is that accurate?

17          A.    I don't know.

18          Q.    And it offers Jeff Carpenter some accrued PT0?

19          A.    Yes.

20          Q.    And as far as compensation it offers nothing else,  
21 correct?

22          A.    Correct.

23          Q.    There is no mention of annual bonuses and there is  
24 no mention of the bonus out of the sale proceeds from the  
25 asset sale, correct?

1 A. Correct.

2 Q. So, for earned wages and PT0, this proposal  
3 requests that Jeff Carpenter discharge and release the  
4 company, which is defined via all the entities above, and a  
5 whole lot of other people, including you, right? You would  
6 be included in this release?

7 A. Where am I listed?

8 Q. Well, it's all the companies and their successors,  
9 affiliates, subsidiaries, etcetera, including officers  
10 directors, employees.

11 A. Where does it say that?

12 Q. Take a look at -- this is in Paragraph 4.

13 A. Okay. Yeah, I am an employee.

14 Q. And he's being asked to release any claims, any  
15 cause of action whatsoever, known or unknown, that are based  
16 upon facts occurring on or prior to the date of the  
17 agreement?

18 A. That's what this agreement says, yes.

19 Q. And so this document is asking Jeff Carpenter to  
20 give up the sale-proceeds bonus and any past-due annual  
21 bonuses, correct?

22 A. I don't think I read it that way.

23 Q. Well, any claims that are based on facts occurring  
24 on or prior to the date of this agreement?

25 A. I don't -- I don't know. I don't think he had a



1 claim because there are no amount -- no amounts were agreed  
2 to.

3 Q. No amounts are agreed to as to what?

4 A. To what you just said.

5 Q. Well, on the sales-proceeds bonus, any amounts  
6 were discussed, that was something Brian Potashnik discussed  
7 with Jeff Carpenter, correct?

8 A. Right.

9 Q. Okay.

10 And Jeff Carpenter --

11 A. But not agreed to.

12 Q. Well, you weren't there, were you?

13 A. I was not there, but I was never told there was an  
14 agreement by Brian or anybody else other than possibly Jeff.

15 Q. Okay.

16 So, can you understand why an employee  
17 would be upset if he's told that if he stays on you intend  
18 to pay him a sales-proceed bonus with a specific formula and  
19 then --

20 A. I never told him that.

21 Q. -- sent him a request? I didn't say you did.

22 A. You just said I said that. Would you be upset  
23 if --

24 Q. Oh, I'm sorry. You're right. You're right. I  
25 started with "you intended".

1 Can you understand why an employee would be  
2 upset if after you and Brian expressed to Jeff Carpenter  
3 that you intended to pay him a bonus out of the sale  
4 proceeds, he's done everything to honor his end of the  
5 agreement through October 31st, and the very next day he is  
6 sent a separation agreement asking him to give up all claims  
7 in exchange for some payment of PTO and earned compensation?

8 MR. L. FRIEDMAN: Objection, speculation,  
9 lack of foundation, assumes facts not in evidence.

10 THE COURT: You're asking her to say  
11 does --

12 MR. GIBSON: Can she understand.

13 THE COURT: -- does she understand why he  
14 was upset. You're asking her to put herself in his mind.  
15 That part of the objection, whichever part, is sustained.

16 MR. L. FRIEDMAN: It was compound. Can we  
17 just break it down?

18 THE COURT: I sustained the objection. Let  
19 her go on.

20 MR. L. FRIEDMAN: Okay. Thank you.

21 Q. (By Ms. Gibson) Would you take a look at  
22 Plaintiff's Exhibit 1, please?

23 (Pause)

24 A. Is that this?

25 MR. L. FRIEDMAN: What is 1?

1 MS. GIBSON: Exhibit 1 is the transcript,  
2 the telephone transcript.

3 THE WITNESS: I don't have that.

4 THE COURT: You only have about three  
5 minutes if you don't want to start that yet.

6 MS. GIBSON: I think --

7 THE COURT: Go ahead.

8 MS. GIBSON: This is going to take a while.  
9 Would it be better just to go ahead and break?

10 THE COURT: We'll take our lunch break,  
11 ladies and gentlemen. We'll see you back in an hour and 10  
12 minutes.

13 (The jury exited the courtroom.)

14 (Lunch recess taken)

15 (The jury entered the courtroom.)

16 THE COURT: Welcome back. Good afternoon,  
17 ladies and gentlemen.

18 We'll continue with the trial. We'll go --  
19 we'll take two 10-minute breaks this afternoon. If you need  
20 additional breaks, get my attention or get Vikki's attention  
21 and we'll take a break whenever you need to. But for now  
22 we'll plan on the next break being in about an hour and 10  
23 minutes or about 2:30.

24 And we'll ask Ms. Gibson to pick up where  
25 she left off with this witness.

1 Q. (By Ms. Gibson) Ms. Geiser, before turning to  
2 Exhibit 1, let's talk about a couple of general things.  
3 First is just with respect to the organization as a whole,  
4 meaning development, construction, and management entities.  
5 Did you and Brian Potashnik share -- share control over how  
6 things were run?

7 A. I would say that Brian had the ultimate  
8 decision-making authority, but we conferred on everything,  
9 most things.

10 Q. Okay. So the two of you worked together in  
11 operating the company but you think Brian Potashnik had the  
12 ultimate say?

13 A. Yes.

14 Q. But you were able to assert some amount of  
15 control --

16 A. Yes.

17 Q. -- as to what you wanted?

18 And the -- the proceeds from the asset  
19 sale, even -- even after any debt was paid for the  
20 companies, you know, just regular operating expenses, the  
21 money left over went to you and Brian Potashnik?

22 A. Can you repeat the question?

23 Q. The money left over after the asset sale went to  
24 you and Brian Potashnik?

25 A. The money left over?

1 Q. Right.

2 A. Can you define that?

3 Q. Meaning there's -- there's nothing else to pay;  
4 here's -- here's the remainder.

5 A. There were amounts that went to Brian and I  
6 personally, if that's your question.

7 Q. When we were talking earlier about you saying to  
8 Jeff Carpenter "I would never screw you", do you also recall  
9 during the same conversations about bonuses saying we really  
10 appreciate all that you do and we know how hard you've  
11 worked and the many extras you've done or words -- words  
12 like that?

13 A. I'm sure I said words to the effect of I  
14 appreciate all you do.

15 Q. And do you recall telling Jeff Carpenter when you  
16 were discussing bonuses, "You've earned it"?

17 A. No, I can't recall saying that.

18 Q. Do you deny that?

19 A. I may have said I believe he earned some amounts,  
20 but not a specific amount.

21 Q. If you would, please, turn to Plaintiff's Exhibit  
22 1.

23 Are you there?

24 A. I am there.

25 Q. This Exhibit 1 is a transcript of a conversation

1 between you and Jeff Carpenter?

2 A. Incorrect.

3 Q. What is it?

4 A. It's a conversation between Jeff Carpenter and  
5 Brian Potashnik.

6 Q. Oh, I'm sorry. You need to flip further. Yours  
7 is in there.

8 A. All right. Can you ask me the question again?

9 Q. Sure.

10 Do you see included in Exhibit 1 is a  
11 transcript of conversation between you and Jeff Carpenter?

12 A. This is a transcript of a conversation that Jeff  
13 secretly recorded between him and I, yes.

14 Q. Okay. And you recollect -- and this -- this  
15 happened on November 2nd?

16 A. I don't know. I don't know. Does it say November  
17 2nd in here?

18 Q. I -- I believe there are some references to dates.  
19 But regardless of whether it was November 2nd or not, this  
20 conversation happened shortly after the proposed separation  
21 agreement was sent to Jeff Carpenter on November 1st,  
22 correct?

23 A. That's my general recollection, yes.

24 Q. And it definitely happened after October 31st,  
25 2007, when Jeff was no longer -- after which, Jeff was no

1 longer needed?

2 A. I believe so, yes.

3 Q. Okay.

4 If you will take a look at the bottom box,  
5 CP. This is on the first page.

6 A. Uh-huh.

7 MS. GIBSON: What happened to it? Okay.

8 Q. (By Ms. Gibson) Do you see you're -- you were  
9 telling Jeff we've just told him -- well, the context is  
10 Jeff is calling about the separation agreement sent to him  
11 that's asking him to release all claims and causes of  
12 action. Is that the context of what he's calling about?

13 A. Ask me the question again, please.

14 Q. Sure.

15 The context of this conversation is Jeff is  
16 calling you and he is upset that he got -- he was just sent  
17 a severance proposal that asked him to release all claims  
18 and all his rights and didn't say anything about the bonus  
19 from asset-sale proceeds or annual bonuses?

20 A. It doesn't say anything about the bonuses up till  
21 that point, but...

22 Q. Well, it does. It's the context of the  
23 conversation?

24 A. My memory is generally that, yes.

25 Q. Okay.

1 And you are telling -- just right above the  
2 last box, you are telling Jeff Carpenter, "You don't have  
3 any rights."

4 A. I say, "You have conversations that we've had.  
5 You have intentions that we've had. You have what we intend  
6 to do and what we want to do. You don't have any rights.  
7 That's about your employment and the legal rights you had  
8 under your employment agreement and that type of thing."

9 "It's a legal document. It's not saying,  
10 Jeff, you give up any hope of ever getting anything. It's a  
11 legal document. It's what you have rights to. And if you  
12 think that you have any other rights or if you think that  
13 you have other rights, then you shouldn't sign the  
14 document."

15 Q. Okay.

16 A. That's the full context of that statement.

17 Q. You read -- Ms. Geiser, you read the box below,  
18 but I was asking you just up above that. You said, "You  
19 don't have any rights"?

20 A. I said that. That's correct, according to this --

21 Q. Okay.

22 A. -- transcript.

23 Q. And when you said you don't have any rights,  
24 you're saying -- you meant Jeff Carpenter. You're telling  
25 him he doesn't have any legal rights, correct?



1           A.    He doesn't have any rights.

2                        "That's about your employment and the  
3 rights that you had under your employment agreement and that  
4 type of thing. It's a legal document. It's not saying,  
5 Jeff, you give up any hope of ever getting anything. It's a  
6 legal document. It's what you have rights to. And if you  
7 think that you have other rights, then you shouldn't sign  
8 the document."

9           Q.    My question is, in the box above where you say you  
10 don't have any rights, you were talking about legal rights,  
11 correct?

12          A.    I'm not a lawyer. I qualify what I meant in  
13 the --

14          Q.    Well, what type --

15          A.    -- in the paragraph below.

16          Q.    What type of rights are you talking about?

17          A.    Rights pursuant to the employment agreement.

18                        "You don't have any rights. That's about  
19 your employment and the rights you had under your employment  
20 agreement and that type of thing. It's a legal document."

21                        So then if you want to make the correlation  
22 that it's legal rights, then you can make that correlation.

23          Q.    You previously told me that legal rights is what  
24 you intended, didn't you, in your deposition?

25          A.    I'm giving you the full context now of what I

1       sai d.

2           Q.     I'm asking you if you previously told me that you  
3       were referring to legal rights.

4           A.     In the context of how I say it here, yes.

5           Q.     Okay.

6                         Prior to October 31st, 2007, the last day  
7       before management transitioned to the purchasers, had you  
8       ever said something like that to Jeff Carpenter: You don't  
9       have any rights or you don't have any legal rights?

10          A.     I don't know.

11          Q.     What do you think is more likely true than not  
12       true?

13                       MR. L. FRIEDMAN: Objection, calls for  
14       speculation.

15                       THE COURT: Sustained.

16          Q.     (By Ms. Gibson) When you say to Jeff Carpenter,  
17       "You have conversations that we've had", you're talking  
18       about conversations about annual bonuses, in part?

19          A.     We've had -- we had conversations about bonuses,  
20       correct.

21          Q.     Including annual bonuses?

22          A.     Bonuses in general, yes.

23          Q.     And the conversations that we've had, you are also  
24       referring to discussions about a bonus out of sale proceeds  
25       if Jeff Carpenter would stay on, correct?

1           A.    There were conversations that were had about  
2 bonuses.

3           Q.    And did they include those bonuses?

4           A.    Like I said earlier, we had conversations about  
5 bonuses. And sales pro -- bonuses out of sales proceeds  
6 would have been if and when the company sold, if the sale  
7 was successful, if there was proceeds available at the time.

8                         There was not an agreement. We didn't  
9 agree. There was no amount stipulated. We had  
10 conversations.

11          Q.    Well, you've already testified, though, that it  
12 would have been Brian Potashnik who would have discussed  
13 the -- the specifics on any bonus out of sales proceeds.

14          A.    That's correct.

15          Q.    Okay.

16                         And when you say, "You have intentions that  
17 we've had", you recall you are referring to your intent to  
18 pay Jeff a bonus out of the sale proceeds for the asset sale  
19 if he would stay on?

20          A.    Discretionary bonus after the sale went through,  
21 if and when, and in the event it went through and there were  
22 sales proceeds available at the end of the day.

23          Q.    You say, "You have what we intend to do and what  
24 we want to do." And what was that?

25          A.    Same answer.

1 Q. Okay.

2 And then you again say that you don't have  
3 any rights. And in this context you're essentially telling  
4 Jeff Carpenter, now that his work is done, that the only  
5 rights he has are under the written employment agreement?

6 A. Correct.

7 Q. And you say to Jeff, "If you think you have other  
8 rights, then you shouldn't sign the document." You're  
9 referring to the proposed separation agreement which he's  
10 being asked to release all claims in exchange for PTO and  
11 earned, past-due, regular salary?

12 A. No, incorrect. He was paid his PTO and his  
13 severance under the employment agreement. We didn't require  
14 him to sign a separation agreement for that. This was to  
15 get an additional \$150,000. That's my memory.

16 Q. Well, the separation agreement that you have in  
17 front of you, it actually -- the initial draft asks that he  
18 release all claims.

19 A. But I told you I don't know about that draft.  
20 You -- the first time I remember seeing that draft is in  
21 this lawsuit, since you've given it to me.

22 Q. But it is -- it is attached to an Email on which  
23 you're copied?

24 A. You say that. I don't know that to be true. I  
25 said the Email was correct. I don't know about the

1 attachment. I don't recall seeing that attachment.

2 Q. You know in this case we have asked you and the  
3 entity defendants for certain documents similar to that.

4 MR. L. FRIEDMAN: Objection, Your Honor.  
5 She (inaudible) --

6 THE COURT: Overruled.

7 Q. (By Ms. Gibson) And, ultimately, although --  
8 although some items were provided to us at some point in the  
9 litigation, do you recall explaining to me that you got rid  
10 of the hard drive that you had retained with business  
11 information?

12 A. After the company sold and I took a computer with  
13 me, I had it for a couple years and then the hard drive  
14 died. So, at that point when I moved, I got rid of it.

15 Q. Okay. In your deposition you simply testified --

16 A. Yeah.

17 Q. -- you got rid of it.

18 A. I forgot to add the fact to you that the thing had  
19 died. It was useless.

20 Q. And so we're not able -- we weren't able to get  
21 various business documents from you-all as a result,  
22 correct?

23 A. It's not because my hard drive died. I mean, I  
24 had -- I don't even know what was on that computer.

25 We had company Internet with all of the

1 documents, but all that stayed with -- or I don't even know  
2 where it went when the closing occurred, so my one computer  
3 wasn't repository of everything.

4 Q. But it had some information on it?

5 A. It -- it may have. I don't know what I would have  
6 kept on that hard drive, but it may have.

7 Q. Where did you find what you produced in this case  
8 after the closing? Was it on that hard drive?

9 A. I don't recall where everything -- everywhere I  
10 looked for documents. There was a lot of documents.

11 Q. Okay.

12 If you will take a look at Page 2.

13 A. Of?

14 Q. Of the same document.

15 A. Page 2 or Page 2 of my conversation?

16 Q. Page 2 of your conversation.

17 Do you see the third box from the bottom?

18 A. Yeah.

19 Q. For you?

20 A. Uh-huh.

21 Q. And here you're saying you've got to be able to  
22 see some preliminary on how this deal is going to shake out.  
23 And I know you don't look forward to it, but you're  
24 referring to the asset sale, this deal?

25 A. Wait. You said third box from --

1 THE COURT: You can see it on the screen  
2 there.

3 THE WITNESS: Okay.

4 I'm just going to read it. I'm just going  
5 to read it from here.

6 MS. GIBSON: Okay. Have you read it?

7 THE WITNESS: Well, I've got to read that  
8 whole page. Hold on.

9 (Witness reading)

10 THE WITNESS: Okay.

11 Q. (By Ms. Gibson) Okay. So, in the first sentence  
12 when you're talking about some preliminary on how this deal  
13 is going to shake out, the deal you're referring to is the  
14 asset sale?

15 A. Yes.

16 Q. And you're saying you need to know how that's  
17 going to shake out before you can start making commitments  
18 and go above and beyond that because you need to make sure  
19 that when everything's said and done and shakes out and  
20 everyone else gets paid, that Brian and I have a certain  
21 amount of money that we can put toward our defense, correct?

22 A. Yes, that's what it says.

23 Q. Okay.

24 And when you referred to defense you were  
25 talking about your criminal defense?

1 MR. L. FRIEDMAN: Objection, in violation  
2 of the motion in limine.

3 THE COURT: Overruled.

4 A. That's correct.

5 Q. (By Ms. Gibson) Okay.

6 And is it fair to say that early on, back  
7 in October of 2006 when the LOI is signed -- the letter of  
8 intent is signed -- you didn't have that type of financial  
9 concern or at least not as much?

10 A. I wouldn't agree with that.

11 Q. You wouldn't?

12 A. No.

13 Q. In about the -- about the month before,  
14 indictments came down in the criminal proceeding, correct?

15 A. The month before what?

16 Q. What?

17 A. The month before what?

18 Q. In about the month -- so, November 1st is the  
19 transition. This conversation happened after that, correct,  
20 you said?

21 A. Yes.

22 Q. And just, approximately, a month before  
23 indictments had come down in the criminal proceeding,  
24 correct?

25 MR. L. FRIEDMAN: Objection, violation of



1       I i m i n e, i r r e l e v a n t.

2                       MS. GIBSON:   It goes to the increased  
3       concern about criminal defense costs.

4                       THE COURT:   Overruled.

5           A.     There were indictments in the case, yes.

6           Q.     (By Ms. Gibson) Okay.

7                       And once you and Brian Potashnik were  
8       indicted you had a greater concern about paying your  
9       criminal --

10                      MR. L. FRIEDMAN:   Objection, direct  
11       violation of the I i m i n e.

12           Q.     (By Ms. Gibson) -- criminal defense attorney.

13                      MR. L. FRIEDMAN:   She was not convicted of  
14       any crime or needs to know that.   I'm asking the Court give  
15       a direct instruction.

16                      THE COURT:   Y'all come over here.

17                      DEFENDANTS' MOTION FOR MISTRIAL

18                      MR. L. FRIEDMAN:   And I'd move for  
19       mistrial.

20                      (Sidebar conference held)

21                      MR. L. FRIEDMAN:   I need a ruling,  
22       Your Honor.

23                      COURT'S RULING

24                      THE COURT:   All right.   The objection's  
25       overruled; the motion's overruled.

1 MR. L. FRIEDMAN: Motion's denied?

2 THE COURT: Yes.

3 DIRECT EXAMINATION (CONT'D)

4 Q. (By Ms. Gibson) Okay. And then if you'll turn to  
5 Page 4 of your conversation.

6 MR. L. FRIEDMAN: Same objection,  
7 Your Honor. We just had this conversation.

8 MS. GIBSON: Your Honor, it's her -- it's  
9 her explanation to Jeff Carpenter.

10 MR. L. FRIEDMAN: Same objection. Doesn't  
11 change the format.

12 THE COURT: Come over here.

13 (Sidebar conference held)

14 MS. GIBSON: Your Honor, it's pre-admitted.

15 MR. L. FRIEDMAN: Your Honor, I'd like an  
16 instruction --

17 THE COURT: That's denied.

18 MR. L. FRIEDMAN: That violated the limine.  
19 I'd like an instruction to --

20 THE COURT: Denied.

21 MR. L. FRIEDMAN: -- disregard any evidence  
22 that -- of an indictment or anything else with regard to  
23 Ms. Potashnik.

24 THE COURT: Okay. It's denied.

25 Q. (By Ms. Gibson) Ms. Potashnik, if you will take a

1 Look at Exhibit 23. Do you recognize Exhibit 23 as an Email  
2 from you to Jeff Carpenter, and below that an Email from  
3 Jeff Carpenter to you?

4 A. Yes.

5 Q. And this is on November 15, 2007?

6 A. Yes.

7 Q. And in Jeff Carpenter's Email to you, he says,  
8 among other things -- oh, I'm sorry.

9 MS. GIBSON: Plaintiff offers Exhibit 23.

10 THE COURT: All right.

11 Any objection?

12 MR. L. FRIEDMAN: Yes.

13 This document would, if admitted, violate  
14 the -- again, the motion in limine. I may not have the same  
15 objection with a redacted copy.

16 THE COURT: Bring it over here.

17 (Sidebar conference held)

18 THE COURT: I'll overrule it.

19 MR. L. FRIEDMAN: I'll reserve --

20 THE COURT: Okay.

21 MR. L. FRIEDMAN: -- my oral objection  
22 until the next break, Your Honor.

23 THE COURT: Fair enough.

24 The objection's overruled and we'll put the  
25 objection on the record at a later time, and 23 is admitted.

1 Q. (By Ms. Gibson) And, Ms. Geiser, in this Email  
2 Jeff Carpenter is saying -- zoom in a little bit -- he's  
3 saying, "Last year, after the Cascade transaction was  
4 announced and it became reasonably clear that I would not be  
5 retained after closing of that transaction, you implored me  
6 to stay with the company through that time, as that  
7 continuity and my continued services were essential to the  
8 success of that transaction. In exchange, you informed me  
9 that I would be entitled to receive, at three percent of the  
10 proceeds of that transaction, net of certain costs; which,  
11 based on the structure at that time, would represent an  
12 amount in excess of 1 million. This is in addition to the  
13 unpaid annual bonuses."

14 Do you recall receiving that?

15 A. Do I recall receiving this Email?

16 Q. Right.

17 A. Yes.

18 Q. Okay.

19 And when -- when Jeff Carpenter is saying  
20 you here, he doesn't -- he's not necessarily referring to  
21 you individually because he's sending this Email to both you  
22 and Brian.

23 A. Yeah, I mean, I know he's not referring to me  
24 because he's already said he didn't have a deal with me. So  
25 this isn't to me.

1 Q. Brian is the one that shook hands on it, correct?

2 A. I have no idea if that's true. I was told about  
3 that.

4 Q. And you later confirmed with him that you intended  
5 to pay it?

6 A. There was no agreement or no handshake agreement.  
7 I only agreed that if there was proceeds left at the end of  
8 the sale, if and when the sale was successful, that there  
9 would be something paid.

10 Q. And then you said, "We will take a look at this  
11 and get back to you as soon as possible."

12 A. I received this from Jeff and I responded, "We  
13 will take a look at this and get back to you as soon as  
14 possible."

15 Q. Okay.

16 Would you please take a look at Exhibit 24?  
17 Do you recognize Exhibit 24 as an Email from yourself to  
18 Jeff Carpenter, dated December 11, 2007?

19 A. Yes.

20 MS. GIBSON: Plaintiff offers Exhibit 24.

21 THE COURT: Any objection?

22 MR. L. FRIEDMAN: No objection, Your Honor.

23 THE COURT: Twenty-four is admitted.

24 Q. (By Ms. Gibson) So, December 11th, you tell  
25 Jeff Carpenter that you and Brian have honored his current

1 employment contract by paying out severance, correct?

2 A. We, on behalf of the company, yes.

3 Q. Okay, we. More than just you and Brian or  
4 everyone or who?

5 A. We, on behalf of the company, Southwest Housing  
6 Management.

7 Q. Okay.

8 And then you say, "As you know, your  
9 employment contract does not provide for you to receive any  
10 bonus after termination."

11 A. Correct.

12 Q. And this is the first time you have ever said that  
13 to Jeff Carpenter, correct?

14 A. No. That was in Jeff Carpenter's employment  
15 agreement that he signed, so he's familiar with this clause.

16 Q. In connection with discussing bonuses to encourage  
17 employees to stay, you never told Jeff, oh, by the way,  
18 we're going to end up saying you're not entitled to any  
19 bonus after termination, did you?

20 A. I didn't restate his employment agreement, no.

21 Q. And then you say, I spoke with Brian and he told  
22 me that he never -- that he never agreed to pay you three  
23 percent of gross after the sale of the business, as you  
24 proposed. "As you're aware, the sale of the business has  
25 not yet occurred."

1           A.    As you proposed in your draft separation  
2 agreement.

3           Q.    Okay.

4                       And then you say that it is only the net  
5 that will be shared.

6           A.    "If and when the sale occurs, it is only at that  
7 time that we will be able to assess if any of the net  
8 profits will be shared with various employees."

9           Q.    So my question is, are you -- are you disputing  
10 that there was any agreement?

11          A.    Yes, I'm disputing there was any agreement.

12          Q.    Are you saying Brian denied that there was any  
13 agreement at all?

14          A.    Yes.

15          Q.    Okay. It wasn't just -- you're not claiming it  
16 was just a gross versus net issue, correct?

17          A.    No. I'm saying there's no deal. And,  
18 furthermore, any discussions about anything will be on a net  
19 basis.

20          Q.    But are you saying Brian told you there was never  
21 any deal at all?

22          A.    Correct.

23          Q.    The proposed severance that Jeff Carpenter sent to  
24 you actually did not refer to three percent of the gross.  
25 It was three percent of the net. Do you recall that?

1 A. Do you have that document? We can look at it.

2 Q. Sure.

3 MR. L. FRIEDMAN: Thank you.

4 What number?

5 MS. GIBSON: SHM5.

6 Q. (By Ms. Gibson) I just highlighted it for you.

7 A. Okay.

8 Q. And I'm just going to use that to refresh your  
9 recollection.

10 A. In the draft separation agreement that Jeff  
11 sent --

12 MR. L. FRIEDMAN: I'm sorry. Exhibit  
13 number, please?

14 MS. GIBSON: I'm just seeing -- I'm just  
15 refreshing her recollection on this.

16 THE COURT: But he wants to see the same  
17 document she's looking at.

18 MS. GIBSON: I gave it to him.

19 THE COURT: Oh.

20 MR. L. FRIEDMAN: No, I have it.

21 THE COURT: It's not in evidence.

22 MR. L. FRIEDMAN: Okay. I got it.

23 THE WITNESS: In the separation agreement  
24 that Jeff --

25 THE COURT: Wait till she asks a question.



1 THE WITNESS: Oh, sorry.

2 Q. (By Ms. Gibson) Okay. Do you see that when you  
3 read that whole highlighted part that it is gross minus  
4 normal closing costs?

5 A. It says an amount in cash equal to three percent  
6 of the gross compensation or consideration, whether in the  
7 form of cash, stock, assumption of debt, fees, loans or  
8 otherwise for the purchase of the company, less reasonable  
9 cost of closing.

10 Q. Okay. That's in net. That would be a net, not a  
11 gross, correct?

12 A. Anything that's less than the full amount is net,  
13 yes.

14 Q. Okay.

15 When you said in your Email that the  
16 contract does not allow for Jeff to receive a bonus after  
17 termination -- if you want to take a look at Exhibit 2, the  
18 contract.

19 A. Okay.

20 Q. Okay. You're referring to Paragraph 7?

21 A. I went to Page 7. I'm sorry.

22 Paragraph 7, Termination of Employment;  
23 Effect of Termination?

24 Q. Yes.

25 A. Uh-huh.

1 Q. Okay. You see that it says employee will not be  
2 entitled to any compensation or benefit pursuant to this  
3 agreement effective on termination, correct?

4 A. Yes.

5 Q. Okay. And you already went over all of the  
6 compensation that was pursuant to this agreement earlier.  
7 Do you remember that?

8 A. Yes, I remember that part of the testimony.

9 Q. Okay.

10 So the -- any handshake agreements on the  
11 asset -- on an asset-sale bonus or annual bonuses after the  
12 first year, those would be separate and not compensation  
13 pursuant to this agreement, correct?

14 A. I'm not following you. Sorry.

15 Q. Well, the only thing that severance is covering  
16 here is that's what you get at the end in lieu of further  
17 benefits pursuant to this agreement, right?

18 A. Okay.

19 Q. And the -- any asset-sale bonus would have been  
20 separate from this agreement, correct?

21 A. I -- I don't know what I --

22 Q. Well -- I'm sorry. Go ahead.

23 A. There was no asset-sale bonus agreement.

24 Q. If there was, you said you intended to pay.

25 A. A bonus out of sales proceeds. I didn't ever

1 intend to pay --

2 Q. A bonus --

3 A. -- an asset-sale bonus. That's your words.

4 Q. Okay. I know. You think asset sale -- I forget  
5 that you think they're different.

6 A. They are different.

7 Q. A -- a bonus out of asset sale proceeds is not  
8 compensation pursuant to that agreement that he would be  
9 giving up. That would be a separate deal, correct?

10 A. I don't know if that's true or not.

11 Q. Well, earlier you covered --

12 THE COURT: You --

13 Q. (By Ms. Gibson) -- all of the compensation  
14 pursuant to that agreement, right?

15 A. Yes.

16 Q. Okay.

17 In connection with closing of the asset  
18 sale, about \$2.1 million is the total amount of bonuses to  
19 other employees paid out of -- paid in connection with the  
20 asset sale, correct?

21 A. They were severance payments.

22 Q. But -- but that's -- the severance payments, I  
23 mean, you were here for Keith Jones' testimony, right?

24 A. Yeah, and I believe he said they were severance  
25 payments.

1 Q. Right. But those severance payments were what  
2 you-all had intended to pay employees to stay.

3 A. I don't really have a lot of memory of the  
4 severance bonus plan or what was negotiated or with  
5 employees that worked for Jeff. That was more or less  
6 something that Jeff and Keith handled. I just know that  
7 every employee received -- every -- certain employees  
8 received amounts in connection with signing a separation  
9 agreement when the sale went through and they were  
10 transferred to the new buyer.

11 Q. Okay. And it was a severance because people were  
12 no longer going to be working for the business?

13 A. They were no longer going to be working for  
14 Southwest Housing Management or whatever entity they worked  
15 for. They were going to be severed from our company and  
16 then rehired by the buyer's company.

17 Q. Okay.

18 You recall being in your deposition.  
19 And I'm at Page 81, 3. Do you recall that I asked you, Do  
20 you know the total amount paid out in sale-proceeds bonuses  
21 to employers other than your -- to employees other than  
22 yourself and Brian? And you say, "Yes." And I say, "What's  
23 the total?" And then you say, "The total bonuses paid out  
24 at sale were approximately 2.1 million."

25 A. Correct.

1 Q. And the 2.1 million paid out, that you said were  
2 paid out in sale-proceeds bonuses, that --

3 A. Paid out of the proceeds from the sale.

4 Q. I'm sorry?

5 A. Paid out of proceeds from the sale.

6 Q. Okay. Well, in the question you didn't take issue  
7 with sales-proceeds bonus --

8 A. Sorry I forgot to take issue with you --

9 Q. -- but you do now.

10 A. -- on that particular time --

11 Q. Okay.

12 A. -- because I've taken issue with it --

13 Q. The total is -- is 2.1 million?

14 A. Uh-huh.

15 Q. And those payouts were not pursuant to any  
16 writing, correct?

17 A. I don't know if that's true as it related to  
18 everybody.

19 Q. Okay. Were the majority of those bonuses paid out  
20 based on oral --

21 MR. L. FRIEDMAN: Objection.

22 MS. GIBSON: I'm sorry. Let me start over.

23 Q. (By Ms. Gibson) Were the majority of those bonuses  
24 out of the asset-sale proceeds paid even though there wasn't  
25 a writing?

1 MR. L. FRIEDMAN: Objection, irrelevant.

2 THE COURT: Sustained.

3 Y'all come back over here.

4 (Sidebar conference held)

5 MR. L. FRIEDMAN: May I have a ruling,

6 Your Honor?

7 THE COURT: It's on the record. I've

8 already sustained that objection.

9 MR. L. FRIEDMAN: Thank you.

10 Q. (By Ms. Gibson) And, Ms. Geiser, you recall that  
11 in this case we requested the actual hard numbers so that we  
12 could do the calculation of payouts ourselves?

13 MR. L. FRIEDMAN: Asked and answered.

14 Q. (By Ms. Gibson) Do you recall that?

15 MR. L. FRIEDMAN: Asked and answered,

16 Your Honor.

17 MS. GIBSON: Not on this.

18 MR. L. FRIEDMAN: Well, she has the hard  
19 number.

20 THE COURT: Go ahead.

21 Overruled.

22 A. I'm sure you did.

23 Q. (By Ms. Gibson) Okay. And the response was you  
24 couldn't find them, correct?

25 A. I -- you'd have to ask my lawyers. I turned

1 everything I had over to them. I did what I was asked to  
2 do. I don't know.

3 Q. Okay.

4 Ms. Geiser, would you take a look at  
5 Exhibits 27 through 34 that are in a stack in front of you?

6 A. All right.

7 Q. Okay.

8 What -- what I'm going to do here in the  
9 interest of time is I'm going to go through each amendment  
10 or closing statement in front of you and just ask if you can  
11 confirm the amount paid to sellers.

12 A. You mean you want me to look at the document and  
13 say if that's the number?

14 MR. L. FRIEDMAN: Can we have a copy of it?

15 MS. GIBSON: I gave them to you ahead of  
16 time.

17 MR. DONOHUE: Is it 25?

18 MS. GIBSON: No. I gave you a stack of  
19 them. You see them?

20 MR. L. FRIEDMAN: Show me what it is.

21 (Pause)

22 MS. GIBSON: I gave you -- if it helps you,  
23 I just -- I gave you a stack.

24 MR. DONOHUE: I have those. I did have a  
25 stack, but --

1 MR. L. FRIEDMAN: I have eight, nine, ten.

2 MS. GIBSON: Okay.

3 You have them?

4 MR. DONOHUE: Starting with 23, you gave us  
5 those. Oh, you're talking about the amendments. Okay.

6 MR. L. FRIEDMAN: I have seven, eight,  
7 nine, and ten. What do you have?

8 MS. GIBSON: Okay.

9 MR. L. FRIEDMAN: What are you looking at?

10 MS. GIBSON: It's -- it's 27 to 34.

11 MR. L. FRIEDMAN: But what's that? Six I  
12 don't have.

13 MS. GIBSON: Six?

14 MR. L. FRIEDMAN: Oh, here it is. Okay.

15 MS. GIBSON: You have six. Okay. All  
16 right.

17 Q. (By Ms. Gibson) So, what I'm going to do is  
18 start -- we already went through some of the amendments.  
19 I'm just going to show you on the screen the amendment and  
20 the amount and just ask you to confirm that that amount was  
21 paid.

22 Well, first of all, do those exhibits  
23 appear to be accurate copies of amendments to the escrow  
24 agreements; and then in the last couple of documents, an  
25 Email from Keith Jones with seller's closing statements and



1 a July 17th, 2008 closing memorandum?

2 MR. DONOHUE: Ours aren't marked  
3 number-wise. Is that all one exhibit or --

4 MS. GIBSON: No, separate.

5 MR. L. FRIEDMAN: You've given us unmarked,  
6 so we have no way of knowing which exhibit you're speaking  
7 of.

8 MS. GIBSON: They're -- they're in order  
9 starting with 27.

10 MR. L. FRIEDMAN: Number six is  
11 twenty-seven?

12 MS. GIBSON: Here. I'll trade you --

13 MR. L. FRIEDMAN: Okay. Good.

14 MS. GIBSON: -- if that's a problem. There  
15 you go.

16 MR. DONOHUE: Thank you.

17 Q. (By Ms. Gibson) Have you had a chance to look?

18 A. Yeah.

19 What was your question?

20 Q. Do Exhibits 27 through 34 appear to be accurate  
21 copies of various amendments to the escrow agreement, and  
22 then at the back a closing memorandum and an Email from  
23 Keith Jones with seller's closing memo?

24 A. Yeah, I guess so.

25 Q. Okay.

1 MS. GIBSON: Plaintiff offers Exhibits 27  
2 through 34.

3 MR. L. FRIEDMAN: Lack of foundation,  
4 hearsay, Your Honor.

5 THE COURT: Okay. Overruled. Twenty-seven  
6 through thirty-four are admitted.

7 Q. (By Ms. Gibson) If you will take a look at the  
8 sixth amendment.

9 A. Okay.

10 Q. Proceeds paid to seller of 1.85 million?

11 A. Okay.

12 Q. And that was earnest money applied to the purchase  
13 price?

14 A. I'm going to say yes, qualified yes. I don't  
15 remember all the details of the sale, but I'm going to go  
16 with that.

17 Q. Okay.

18 Escrow amendment seven, \$925,000 paid to  
19 sellers?

20 A. Yes.

21 Q. And that was also earnest money applied to the  
22 purchase price?

23 A. Again, same answer.

24 Q. Escrow amendment eight, \$925,000 to sellers?

25 A. Same answer.

1 Q. And so that's a yes?

2 A. Yes. And I'm qualifying it with your  
3 characterizing it as earnest money and I'm not sure if  
4 that's an accurate characterization, but I'm accepting  
5 it for now.

6 Q. Okay.

7 And escrow amendment nine, \$925,000 paid to  
8 sellers?

9 A. Yes.

10 Q. Escrow amendment 10, \$925,000 paid to sellers?

11 A. Yes.

12 Q. Seller's closing statement, Phase 1, the -- the  
13 net amount to sellers [sic] after closing costs was  
14 17,000 -- or, I'm sorry -- 17,584,388.30, as shown on the  
15 screen.

16 A. Okay.

17 (Pause)

18 Hang on a second.

19 Q. Okay.

20 (Pause)

21 A. Okay. Can you ask me the question again?

22 Q. Sure.

23 With respect to seller's closing statement,  
24 Phase 1, the net proceeds to seller after closing costs was  
25 \$17,584,388.38 -- or, and 30 cents.

1 A. Net cash to seller first closing, 17,584,388.30.

2 Q. And the Bank of America payment was not a closing  
3 cost, correct, looking at the same seller's closing  
4 statement?

5 A. I mean, I guess it depends how you define closing  
6 cost.

7 Q. Well, the Bank of America payment was -- was owed  
8 by the businesses regardless of the asset sale, correct?

9 A. I don't know if that's really true. It was -- in  
10 order for Bank of America to consent to the sale of that  
11 asset to Cascade they required that payment. So I don't  
12 know what would have happened if the sale didn't happen or  
13 if that asset wasn't transferred.

14 Q. Okay. Do you recall telling me at your deposition  
15 that that payment would have been owed regardless of the  
16 asset sale?

17 A. Yeah, but I thought more about it. And as I sit  
18 here today and I'm refreshing my memory, we probably would  
19 have had to make separate negotiations with Bank of America.  
20 So I'm just not sure.

21 Q. Okay. Well, according to -- if you'll take a look  
22 at the second page of that closing statement.

23 A. The second page of what closing -- oh, okay.

24 Q. I'm sorry. The second page of the exhibit.

25 A. Yeah.

1 Q. Do you see that there's a line item for seller's  
2 closing costs and certain other closing costs below,  
3 commissions and costs?

4 A. Uh-huh.

5 Q. And you see that the Bank of America payment is  
6 not included in closing costs?

7 A. Correct.

8 Q. Okay.

9 A. But it wasn't. It wasn't a cost of closing but it  
10 was a cost of the deal to get the deal done, to get the  
11 consent.

12 Q. Okay. It was not a closing cost, correct?

13 A. Not as defined by that narrow statement, no.

14 Q. Okay.

15 If you'll take a look at closing memo,  
16 Phase 2, the net payment to sellers after closing costs was  
17 \$2,314,644 --

18 A. Wait, wait, wait, wait.

19 Q. -- .09?

20 A. Wait. I don't have that. I have two of the first  
21 closing.

22 Q. You don't have Carpenter 588 to 589 marked as one  
23 of those exhibits?

24 A. Are you talking about this one?

25 Q. Yes.

1           A.    Okay, then I do have that. It's just in a  
2 different format than this one.

3           Q.    All right. No, but we -- it's -- we produced  
4 it to you, didn't we?

5           A.    Okay. What's your question?

6           Q.    Okay, the question is the closing memo for Phase 2  
7 the net to seller after closing costs is \$2,314,644.09?

8           A.    Okay.

9           Q.    Is that accurate?

10          A.    It says, "Following the closing, escrow agent will  
11 wire 2,314,644.09 to seller based on wire instructions to be  
12 provided by seller representing the net proceeds due seller  
13 with respect to the sale."

14          Q.    Okay. It's net proceeds.

15          A.    Okay.

16          Q.    Okay. And the --

17          A.    Sorry. It's been a long time since I, you know,  
18 went through this in detail.

19          Q.    That's okay.

20          A.    So I'm just making sure I'm clear.

21          Q.    So the total -- and this is including things that  
22 we went over before lunch --

23          A.    Uh-huh.

24          Q.    -- ends up being just shy of 33 million net to  
25 sellers. Does that sound about right?

1 A. Does what sound about right?

2 Q. Just shy of 33 million net to sellers after  
3 closing costs.

4 A. Are you asking me do I think that those totals  
5 equal that?

6 Q. No. I'm just saying, Does that -- does that sound  
7 about right to you? Does that look off to you?

8 A. I don't recall if there was a subsequent closing  
9 to the second closing.

10 Q. I will represent to you that there are, but there  
11 were no additional net payments to sellers.

12 A. Okay.

13 Q. According to those closing memos.

14 A. All right. So that's 33 million. I said 34  
15 million. Pretty close.

16 Q. Okay.

17 MS. GIBSON: Your Honor, I'd like to pass  
18 the witness --

19 THE COURT: Okay.

20 MS. GIBSON: -- but may I have a brief  
21 bathroom break?

22 THE COURT: Sure.

23 We'll take a -- we'll take our 10-minute  
24 break, ladies and gentlemen. We'll see you back in 10  
25 minutes.

1 (The jury exited the courtroom.)

2 (Recess taken)

3 (The jury entered the courtroom.)

4 THE COURT: Welcome back. Good afternoon,  
5 ladies and gentlemen.

6 We'll continue with the testimony of this  
7 witness and we'll ask Mr. Friedman to begin his questioning.  
8 We will go for about an hour and 10 minutes before we take  
9 that second afternoon break. So that will be about 3:35.

10 MR. L. FRIEDMAN: Your Honor, if you don't  
11 mind, I'm going to stand because --

12 THE COURT: All right. However you're most  
13 comfortable.

14 MR. L. FRIEDMAN: -- I can't properly see  
15 the witness --

16 THE COURT: That's fine.

17 MR. L. FRIEDMAN: -- with the screen blown  
18 up. Thank you.

19 CROSS-EXAMINATION

20 BY MR. L. FRIEDMAN:

21 Q. Okay. Ms. Geiser Potashnik?

22 A. I think that's right.

23 Q. Bring that microphone just a little bit closer to  
24 you.

25 A. Okay, now you got me confused. It's Geiser



1 Potashnik. That's correct.

2 Q. All right. That's good.

3 Ms. Potashnik, all of these transactions  
4 took place at least 10 years ago; is that correct?

5 A. Yes.

6 Q. And negotiations with Mr. Carpenter took place  
7 longer than that?

8 A. Conversations with Mr. Carpenter, yes.

9 Q. Yeah. In other words, I wrote down some dates I  
10 want to go over with you, but --

11 MR. L. FRIEDMAN: May I approach the easel,  
12 Your Honor?

13 THE COURT: Certainly.

14 MR. L. FRIEDMAN: Thank you.

15 Q. (By Mr. L. Friedman) -- your negotiations with  
16 Mr. Carpenter started prior to the time he signed his  
17 employment contract on February 4th, 2004; is that correct?

18 A. Yes. Yes.

19 Q. And then the employment contract that we've been  
20 talking about is dated February 4th?

21 A. I think that's right.

22 Q. Correct?

23 A. Yeah.

24 Q. And I don't want to belabor the point but I do  
25 want to go over just a few things in that contract.

1 JUROR NUMBER 5: Can we turn that a little  
2 bit? We can't see it.

3 MR. L. FRIEDMAN: Oh, I'm so sorry. It's  
4 all about me, if I can see it.

5 JUROR NUMBER 5: That looks good. That's  
6 better. There you go.

7 THE WITNESS: Now I can't see it, Steve.

8 MR. L. FRIEDMAN: Can you see it?

9 THE WITNESS: Can you see it?

10 MR. L. FRIEDMAN: Yeah.

11 THE WITNESS: I can see it.

12 MR. L. FRIEDMAN: Judge, can you see it?

13 THE COURT: Uh-huh.

14 MR. L. FRIEDMAN: Okay. I apologize.

15 Q. (By Mr. L. Friedman) Cheryl, I'm going to try to  
16 go quickly and not take my hour and 10 minutes.

17 MR. L. FRIEDMAN: Let me use the Elmo,  
18 'cause I think it'll go faster.

19 What do I need to do?

20 MR. DONOHUE: Tap the screen.

21 Q. (By Mr. L. Friedman) Okay. So this is the exhibit  
22 we've been talking about yesterday and today. This is  
23 Mr. Carpenter's employment contract, correct?

24 A. Correct.

25 Q. And just briefly, contract is between Southwest

1 Housing Management and Mr. Carpenter, correct?

2 A. Yes.

3 Q. And it was your testimony or isn't it your  
4 testimony that that's the only written employment contract  
5 or only written contract, employment or not, between any of  
6 the entities and Mr. Carpenter?

7 A. Yes.

8 Q. Correct?

9 A. Correct.

10 Q. Let's -- Let's go down to Paragraph 2, At-Will  
11 Employment. I think you've testified what at-will  
12 employment means. And weren't you present at  
13 Mr. Carpenter's last deposition when he testified that  
14 before he signed this agreement he read it, he understood  
15 it, and he intended to comply with every term of this  
16 agreement and then signed it?

17 A. Yes. That's my memory.

18 Q. You heard him say that?

19 A. I did.

20 Q. At his deposition a week or 10 days ago?

21 A. Correct.

22 Q. With regard to duties, his duties were to perform  
23 whatever it is Mr. Potashnik, as the president of the  
24 company, told him to do. And I don't mean hard labor. I  
25 mean manage this company or work on the financials with

1 Keith Jones or work on the development with Sara Reidy and  
2 things like it.

3 A. Correct.

4 Q. Okay.

5 And for that you paid him a very generous  
6 \$2,000-a-year [sic] salary?

7 A. \$200,000.

8 Q. I'm sorry. \$200,000-a-year salary?

9 A. Yes.

10 Q. I was thinking about the allowance that my wife  
11 gives me.

12 So you paid Mr. Carpenter's salary every  
13 day that he worked. I say "you". Southwest Management paid  
14 Mr. Carpenter's salary every day that he worked for  
15 Southwest Management; is that correct?

16 A. Yes.

17 Q. Southwest Management paid his salary from the day  
18 he began employment until the day he finished?

19 A. Correct.

20 Q. And if you recall -- and I'll show you some  
21 documents in a minute -- he was terminated on October 31st,  
22 2007, but he was paid through November 2nd, 2007. Do you  
23 remember that?

24 A. Vaguely.

25 Q. All right. Well, let me come back to that.

1 A. Okay.

2 Q. But he was paid for every day he worked for the  
3 company?

4 A. Yes.

5 Q. Did good work; got good pay?

6 A. Yes.

7 Q. Now, this agreement covers bonuses, as we've  
8 talked about ad -- ad finitum. And the only bonus that was  
9 guaranteed was the first year's bonus, minimum of \$50,000?

10 A. It was discretionary.

11 Q. Discretionary and you paid it?

12 A. Correct.

13 Q. All right.

14 The rest of the bonuses were also  
15 discretionary, correct?

16 A. Yes.

17 Q. And we -- what does discretionary mean to you?

18 A. At your discretion. It's subjective.

19 Q. Okay, subjective. So Southwest Management made  
20 the decision to pay it or not to pay it at the end of every  
21 year?

22 A. Correct.

23 Q. So, Mr. Carpenter started March 2004. Come the  
24 end of 2004 or in March 2005, Southwest Management had a  
25 chance to look at the company, see whether he was leasing up

1 the properties, whether the company was profitable, and  
2 either pay him or not pay him a bonus --

3 A. Right.

4 Q. -- correct?

5 A. Yes.

6 Q. And Southwest Management didn't pay Mr. Carpenter  
7 a bonus in 2004, 2000 -- I'm sorry -- 2005, 2006, and 2007;  
8 is that correct?

9 A. I don't think -- I don't think we did.

10 Q. All right. But they paid him the \$50,000?

11 A. That I've seen proof of, yes.

12 Q. Okay.

13 And he was reimbursed for his expenses,  
14 correct?

15 A. Yes.

16 Q. And paid time off and health insurance, got COBRA  
17 when he left, and all that stuff, right?

18 A. Yes.

19 Q. On termination, I think you addressed that before.

20 Is there anything unclear about Paragraph 7  
21 where it says employee will not be entitled to any  
22 compensation or benefits pursuant to this agreement  
23 effective upon the termination of employee's employment, the  
24 removal of the employee from the position of executive vice  
25 president, and/or upon the employee's death, as noted below?

1 A. That's clear.

2 Q. And is there anything unclear about, in the event  
3 company terminates employee, employee will receive severance  
4 in an amount equal to six weeks of base salary and a lump  
5 sum payable upon such termination?

6 A. That's clear.

7 Q. And to your knowledge, Southwest Management --  
8 Southwest Housing Management paid Mr. Carpenter six weeks of  
9 base salary and a lump sum upon his termination?

10 A. Yes.

11 Q. In compliance with the terms of this agreement?

12 A. Correct. And he accepted that money.

13 Q. And he accepted the money.

14 Now I'm going to Paragraph 12, which we've  
15 talked about over and over again. The agreement between  
16 Mr. Carpenter and Southwest Housing Management was no  
17 amendment or alteration of the terms of this agreement shall  
18 be valid unless made in writing and signed by both of the  
19 parties to this agreement. Meaning Southwest Housing  
20 Management and Mr. Carpenter, correct?

21 A. Yes.

22 Q. Not Santa Claus, not Disneyland, not Affordable  
23 Housing, not Development, not anybody else. If -- if there  
24 was any change in the terms of this agreement it had to be  
25 signed by Mr. Carpenter and Southwest Housing Management,

1 correct?

2 A. Yes.

3 Q. The agreement goes on to say on Paragraph 17 --  
4 which we hadn't focused on or which Ms. Gibson hadn't  
5 focused on -- was this. It says -- it's entitled Entire  
6 Agreement and Binding Effect. And it says --

7 (Coughing)

8 MR. L. FRIEDMAN: Somebody need water?

9 Q. (By Mr. L. Friedman) It says, "This agreement  
10 contains the entire agreement of the parties with respect to  
11 the subject matter hereof and shall be binding upon and  
12 inure to the benefit of the parties to this agreement and  
13 their legal representatives, heirs, distributors, successors  
14 and assigns."

15 But the important language in this sentence  
16 is this agreement contains the entire agreement of the  
17 parties with respect to the subject matter hereof. Is that  
18 correct?

19 A. Yes.

20 Q. And with regard to the subject matter of this  
21 agreement of the employment relationship regarding  
22 Mr. Carpenter, the subject matter has to do with employment,  
23 at-will employment, specification of his duties, how he was  
24 compensated, Paragraph Number 4. 4A is his salary and 4B  
25 has to do with his bonus structures as an employee of



1 Southwest Housing Management.

2 A. Right.

3 Q. Do you agree with that?

4 A. Yes.

5 Q. And do you agree that bonuses, bonus structures,  
6 and changing the bonus structures at the discretion of the  
7 company is a subject of this agreement?

8 A. Yes.

9 Q. And would you interpret that to fall within  
10 Paragraph 17 covered by this agreement?

11 A. Yes.

12 Q. All right.

13 Now, you were at Mr. Carpenter's deposition  
14 when he testified. And I think it's in his declaration,  
15 which we'll put on in our case in chief. Mr. Carpenter  
16 testifies that he met with Brian Potashnik.

17 MR. L. FRIEDMAN: Is it Geiser Potashnik?

18 MR. POTASHNIK: No, not Potashnik, Geiser.

19 Q. (By Mr. L. Friedman) He met with -- Ms. Potashnik  
20 met with -- Mr. Carpenter alleges that he met with  
21 Mr. Potashnik on October 13th, 2006, made a deal, shook his  
22 hand, gave him a kiss, whatever, but left with a valid  
23 enforceable agreement. You were present when Mr. Carpenter  
24 said that?

25 A. Yes.

1 Q. I mean, do you remember that or not?

2 A. Generally, yes.

3 Q. Yeah, said he had an agreement from that time on,  
4 had a valid enforceable agreement. So you would expect  
5 Mr. Carpenter to act like someone who had a valid  
6 enforceable agreement, right?

7 A. Yes.

8 Q. All the terms and conditions agreed upon with  
9 Mr. Potashnik?

10 A. Right.

11 Q. I mean, you'd have to have all the terms and  
12 conditions agreed upon to have a valid enforceable  
13 agreement. Would you -- would you agree with that?

14 A. Yes.

15 Q. So, going back to Exhibit Number 23 Ms. Gibson  
16 highlighted a few minutes ago --

17 A. I'm out of order. Sorry.

18 Q. What's that?

19 A. My exhibits are out of order.

20 Q. It's the November 15th Email string.

21 MR. DONOHUE: Make sure it's been admitted.

22 MR. L. FRIEDMAN: I'm sorry. Has it been  
23 admitted, Your Honor?

24 THE COURT: Yes.

25 THE WITNESS: Twenty-three I have.

1 MR. L. FRIEDMAN: All right. So I'll put  
2 it up on the screen. You can follow it on the screen or on  
3 your platform.

4 Q. (By Mr. L. Friedman) So this is a year after  
5 Mr. Carpenter alleges that he had a valid, enforceable, oral  
6 agreement with Mr. Potashnik.

7 Mr. -- we pick -- we pick up at the top  
8 here with your response to Mr. Carpenter's last Email -- I'm  
9 sorry -- with your response to Mr. Carpenter's 7:30 a.m.  
10 Email. But Mr. Carpenter is Emailing you. And in the  
11 portions that weren't highlighted before in the middle of  
12 the first paragraph, he says, "Last year, after the Cascade  
13 transaction was announced and it became reasonably clear  
14 that I would not be retained after closing of that  
15 transaction, you implored me stay with the company through  
16 that time,"

17 "Through that time" meaning the closing?  
18 Is that how you read it?

19 A. Yes.

20 Q. "as that continuity and my continued services were  
21 essential to the success of that transaction. In  
22 exchange," -- am I reading that in exchange for staying  
23 through the closing?

24 A. Yes.

25 Q. "you informed me that I would be entitled to

1 receive at three percent of the proceeds of that transaction  
2 net of certain costs; which, based on the structure at that  
3 time, would represent an amount in excess of \$1 million."

4 So, what do you get from that? Number one,  
5 it's November 15th, 2007, and Mr. Carpenter does not have  
6 any evidence of an oral agreement as far as you know,  
7 correct?

8 A. Right.

9 MS. GIBSON: Object to leading.

10 THE COURT: Sustained.

11 Q. (By Mr. L. Friedman) As of November 15th, 2007,  
12 are you aware of any evidence Mr. Carpenter has of any oral  
13 agreement?

14 A. No.

15 Q. And the November 15th, 2007 Email from  
16 Mr. Carpenter are his self-serving words, correct?

17 A. Correct.

18 Q. Correct?

19 And you say --

20 MS. GIBSON: Object to leading. Sorry --

21 THE COURT: Sustained.

22 MS. GIBSON: -- I was a little late.

23 THE COURT: It's already asked and  
24 answered. Go ahead.

25 Q. (By Mr. L. Friedman) And you say -- your response

1 is, "Jeff, we'll take a look at this and get back to you as  
2 soon as possible," right?

3 A. Yes.

4 Q. You didn't say that was the deal, correct?

5 A. Correct.

6 Q. You didn't say Brian told me that was the deal?

7 A. Correct.

8 Q. There's no affirmation or confirmation whatsoever  
9 affirming what Mr. Carpenter is proposing in this Email,  
10 correct?

11 A. Right.

12 Q. Now Mr. Carpenter, if you look further down this  
13 Email -- the man who alleges that he has a valid,  
14 enforceable, oral agreement -- his next-to-the-last  
15 paragraph says, second sentence, "Accordingly, I have taken  
16 the liberty of reworking" -- reworking -- "and attached the  
17 draft separation agreement that you provided to incorporate  
18 those other elements."

19 "Of course, as I have repeatedly said, I'm  
20 understanding of the company's condition and the uncertain  
21 status of the Cascade transaction. As such, I am more than  
22 willing to explore mutually agreeable ways to address those  
23 issues while still preserving the spirit of our agreement  
24 and our mutual interest in the financial success of the  
25 company and the transaction. Attached document is a draft

1 only; and that once the substantive points are confirmed, I  
2 reserve the right to have it formally reviewed by an  
3 attorney to confirm that it is complete."

4 So, first I ask you, does that sound like  
5 it's coming from someone who has a valid, enforceable, oral  
6 agreement?

7 A. No.

8 Q. When you received that Email, did you understand  
9 it to come from someone who already had a valid,  
10 enforceable, oral agree -- or any agreement?

11 A. No.

12 Q. Does that indicate to you that Mr. Carpenter is  
13 attempting to get whatever agreement that he wants or still  
14 negotiated in writing?

15 A. Yes.

16 Q. I mean, do you know why Mr. Carpenter is now  
17 drafting an agreement and sending it to you?

18 A. No.

19 MR. L. FRIEDMAN: And do we have that draft  
20 separation agreement?

21 Q. (By Mr. L. Friedman) All right. And it appears  
22 from that paragraph that Mr. Carpenter -- you can -- if you  
23 recall, that's great; but if not, just read it with common  
24 sense. Does it -- do you have an understanding as to  
25 whether or not Mr. Carpenter is still negotiating?

1 A. It appears that way.

2 Q. And not only that, if you could reach agreement,  
3 he says he still wants to confirm by his lawyer. Might  
4 change again?

5 A. Correct.

6 Q. The same day he sent that separation agreement --  
7 which I thought I had.

8 And you were present during Mr. Carpenter's  
9 testimony that he said he decided to file suit against you  
10 and Brian and Southwest Housing Management and Development  
11 and Affordable Housing Construction on December 15, 2007?

12 A. Correct. Right.

13 Q. Did he tell you that?

14 A. Did he tell me that prior to filing --

15 Q. Well, December 15th, while he was still  
16 negotiating with you, did he tell you, "I'm going to file  
17 suit"?

18 A. I don't believe so.

19 Q. And then on March 8th -- 11th of 2008, he did file  
20 suit?

21 A. Correct.

22 Q. And he filed suit at least a month before the  
23 closing began?

24 A. Yes.

25 Q. Never gave you a chance to close your deal to see

1 if you would give him a bonus?

2 A. Right.

3 Q. And when he filed suit he did go attempt to get a  
4 temporary restraining order to gather some proceeds for  
5 himself, didn't he?

6 A. That's my understanding.

7 Q. All right. And that was regardless of whether the  
8 deal closed?

9 MS. GIBSON: Object to leading, continued  
10 leading.

11 THE COURT: Sustained.

12 Q. (By Mr. L. Friedman) In March of 2008, before the  
13 deal closed, Mr. Carpenter wanted over a million dollars  
14 earmarked for himself, correct?

15 MS. GIBSON: Object to leading.

16 THE COURT: You're still leading.

17 MR. L. FRIEDMAN: Okay.

18 THE COURT: Sustained.

19 Q. (By Mr. L. Friedman) What did Mr. Carpenter want in  
20 March of 2008?

21 A. My memory is that he filed something with the  
22 court to get a temporary restraining order. I may be  
23 screwing up the legal terminology, but asking the Court to  
24 force the parties to put over a million dollars into an  
25 escrow or something prior to the sale occurring.



1 Q. All right.

2 And when he made that request, was that  
3 before or after you and Mr. Potashnik, Southwest Housing  
4 Management, Southwest Housing Development, and Affordable  
5 Care Housing received any money?

6 A. That was before, yes.

7 Q. Okay. And the same thing goes for any of the  
8 other discretionary bonuses you gave to other employees in  
9 the company --

10 A. Let me just correct my --

11 Q. -- before that --

12 A. Let me correct my prior statement, then. You  
13 said, Is that prior to anybody receiving any money? There  
14 were those additional releases under the amended escrow  
15 agreements, but this was -- that was prior to the  
16 transaction being consummated, to the sale going through.

17 Q. Well, let me make it more precise. Was that  
18 before or after the -- any other employees received any  
19 discretionary bonuses?

20 A. Before.

21 Q. He wanted his first?

22 A. Correct.

23 Q. Now, I do have the separation agreement that went  
24 along with this November 15th Email. And in the separation  
25 agreement that Mr. Carpenter drafted and sent to you --

1 MR. L. FRIEDMAN: Do we have an exhibit  
2 number for that?

3 MR. DONOHUE: Twenty-four, I think.

4 MR. L. FRIEDMAN: I'm sorry. Twenty-four?

5 MR. DONOHUE: Defendants' Exhibit 24.

6 MS. GIBSON: What?

7 MR. L. FRIEDMAN: It's Defendants' Exhibit  
8 24.

9 And I'll -- I'll move for admission as  
10 Defendants' Exhibit 24.

11 MS. GIBSON: I don't have a copy of what  
12 you're talking about.

13 MR. DONOHUE: Here you go.

14 MR. L. FRIEDMAN: Do you have a copy?

15 THE WITNESS: Somehow, I have a copy.

16 MR. L. FRIEDMAN: Oh, let me -- may I  
17 approach the witness, Your Honor?

18 THE WITNESS: I have a copy.

19 THE COURT: She has a copy.

20 THE WITNESS: It's attached to that Email.

21 MS. GIBSON: That's a different --

22 THE WITNESS: This is different?

23 MS. GIBSON: Well, it may not be a  
24 different agreement but it's a different document and it has  
25 my highlighting on it.

1 THE WITNESS: Okay.

2 MS. GIBSON: I just gave you my copy.

3 THE WITNESS: All right.

4 Do you want it back?

5 MS. GIBSON: Oh, no. Just -- you can leave  
6 it up there.

7 THE COURT: All right. Go ahead, if you  
8 want to give her your document.

9 MS. GIBSON: But in the interest of time,  
10 we have no objection.

11 THE COURT: Okay. It's not already in  
12 evidence. That's not the --

13 MS. GIBSON: No. Just to 24 being  
14 admitted.

15 THE COURT: All right.

16 MR. L. FRIEDMAN: No, Ms. Gibson didn't  
17 offer it into evidence.

18 THE COURT: All right. Defendants' 24 is  
19 admitted.

20 Q. (By Mr. L. Friedman) Along with the November 15th  
21 Email --

22 THE COURT: Just a second.

23 Did you -- Vikki, did you get that?

24 THE REPORTER: Yes, I did.

25 THE COURT: All right.

1 MR. L. FRIEDMAN: Does she have it?

2 THE REPORTER: Yes, I did.

3 THE WITNESS: I think I have it.

4 MR. L. FRIEDMAN: Let me give -- may I  
5 approach, Your Honor?

6 THE COURT: Certainly.

7 MR. L. FRIEDMAN: Let me give her the  
8 exact same one I'm talking about.

9 Q. (By Mr. L. Friedman) Along with the November 15th  
10 Email was attached the written draft-separation agreement  
11 that Mr. Carpenter was proposing to address to show  
12 Brian Potashnik and Southwesthousing.com. So you go to the  
13 attachment -- or I go to the attachment. Lo and behold, if  
14 you look at Paragraph 5, Mr. Carpenter says, "In addition to  
15 the foregoing amounts, employee will be paid within seven  
16 days of the date of closing of any transaction as defined  
17 above an amount in cash equal to three percent of the" --  
18 this is important. He is proposing --

19 MS. GIBSON: I just object to the  
20 commentary and continued leading.

21 THE COURT: The sidebar objection is  
22 sustained.

23 MR. L. FRIEDMAN: All right. I'm just  
24 reading.

25 Q. (By Mr. L. Friedman) "In addition to the foregoing

1 amounts, employee will be paid within seven days of the date  
2 of closing of any transaction as defined above an amount in  
3 cash equal to three percent of the gross compensation or  
4 consideration, whether in the form of cash, stock,  
5 assumption of debt, fees, loans, or otherwise, for the  
6 purchase of the company, less reasonable costs of closing."

7 Now, does it say in there less other  
8 employee bonuses?

9 A. No.

10 Q. Or -- or is that a different formula than you  
11 heard Mr. Carpenter testify to in his deposition?

12 A. It's different.

13 Q. I see.

14 And Mr. Carpenter is attempting to get  
15 what? He's attempting to comply with Paragraph 12 of his  
16 employment agreement.

17 MS. GIBSON: Object to leading.

18 THE COURT: Sustained.

19 MR. L. FRIEDMAN: Okay.

20 Q. (By Mr. L. Friedman) Well, as it pertains to the  
21 terms of his employment agreement, do you have an  
22 understanding of what Mr. Carpenter is attempting to do by  
23 sending you a draft separation agreement for you and  
24 Mr. Potashnik to sign?

25 A. He's trying to get an agreement.

1 Q. A written agreement?

2 A. Correct.

3 Q. Signed by the parties who signed his employment  
4 contract?

5 A. And others.

6 Q. And others?

7 A. Yes.

8 Q. And he wants to bind more people than that?

9 A. Correct.

10 Q. So, while we're here, let's take a look at the  
11 formula. It looks to me like Mr. Carpenter is asking you  
12 for a real estate commission or a type of commission on the  
13 sale of the company. Would you agree with that?

14 MS. GIBSON: Object to leading.

15 THE COURT: Sustained.

16 Q. (By Mr. L. Friedman) Look at Paragraph 5 and tell  
17 me what it appears to you that Mr. Carpenter is trying to  
18 achieve.

19 A. What he's trying to achieve?

20 Q. Well, other than just get money. I mean, could he  
21 have -- could a formula like that reflect an understanding  
22 of the transaction?

23 MS. GIBSON: Object to leading.

24 THE COURT: Overruled.

25 A. The -- are you referring to the sales transaction?

1 Q. (By Mr. L. Friedman) Yeah, the sales transaction.

2 A. The sale was very complicated. There was a lot of  
3 adjustments. And that, to me, is a very simplified way to  
4 calculate anything associated with the sale.

5 Q. So, for example, when he says less reasonable cost  
6 of closing, could you determine -- could anybody determine  
7 from this agreement what he meant by reasonable cost of  
8 closing?

9 A. No.

10 Q. I mean, how many different kinds of costs of  
11 closing was there in the final sales transaction, by  
12 example?

13 A. I mean, I -- I can pull out the closing statement.  
14 (Pause)

15 On this closing memorandum it looks like  
16 there was 19 different closing costs.

17 Q. And what do they consist of?

18 A. It says property due diligence, accounting  
19 services, abstractor's certificate, recording fees, title  
20 reports, wire fees, UCC searches, MMA DUS loan counsel,  
21 Wells Fargo legal fees -- MMA DUS loan counsel for  
22 Pleasanton -- Wells Fargo legal fees for the trustee,  
23 Pleasant Hill housing counsel, San Antonio Housing Authority  
24 and another entity, legal fees and costs -- MMA legal fees  
25 and costs -- Capmark legal fees and costs, transaction

1 construction loan transfer fees, lender legal --

2 THE WITNESS: Am I going slow enough?

3 No.

4 A. -- lender legal and transfer fees - Old Manor,  
5 lender legal and transfer fees - Aldine Bendor, Travis  
6 County Housing Finance Corporation consent fee - Old Manor,  
7 SLP fees, HUB interest purchase, CAH Texas counsel, seller's  
8 counsel, CAH counsel.

9 Q. (By Mr. L. Friedman) Would you have been -- did  
10 you or were you able to determine what Mr. Carpenter meant  
11 was reasonable cost of closing from his draft of separation  
12 agreement?

13 A. No.

14 Q. Did Mr. Potashnik ever tell you that he had  
15 discussed reasonable costs of closing with Mr. Carpenter?

16 A. No.

17 Q. Do you think Mr. Potashnik would know what cost of  
18 closing consisted of?

19 A. He would have had a good idea, yes.

20 Q. Of all the things he read on that sheet?

21 A. I don't think any of us had a great idea that it  
22 was going to be this, but yes.

23 Q. Of the amount. But the things that you read  
24 Mr. Potashnik would certainly know about?

25 A. Yes.



1 Q. That was not a handshake/hug deal and say, okay,  
2 here's a million dollars, was it?

3 A. No.

4 Q. Ms. Potashnik, look at Page 2 of the separation  
5 agreement. Just turn the page.

6 And look at the second full sentence on top  
7 of the page. Mr. Carpenter was writing you on November 15,  
8 2017. "The gross compensation amount for purposes of this  
9 paragraph shall not exclude, and shall specifically include,  
10 any amounts paid to or for the benefit of the Potashniks,  
11 the company, and/or its stockholders in the form of fees,  
12 bonuses, severance payments, loans, or otherwise."

13 Shall not exclude payments to the  
14 Potashniks, the company, the stockholders, in the form of  
15 fees, bonuses, severance payments, loans, or otherwise.  
16 Again, no mention of other employee bonuses?

17 A. Correct.

18 Q. Now, as you know it from all the pleadings that  
19 have been filed in this case and from Mr. Carpenter's  
20 demands, that's not his position today, is it?

21 A. It is not.

22 Q. Today, as you know it, Mr. Carpenter is telling  
23 this jury that the alleged, valid, enforceable, oral  
24 agreement that he made with Mr. Potashnik on October 13,  
25 2006, excludes other employee bonuses, that \$2.1 million

1 number that Ms. Gibson had you testify to, correct?

2 A. Yes.

3 Q. Do you have an understanding of whether or not  
4 Mr. Carpenter knows what deal he's trying to enforce?

5 A. No.

6 Q. And then, finally, the last sentence after that  
7 after the highlight, Mr. Carpenter wrote, "In addition, the  
8 gross compensation amount shall be deemed fully earned and  
9 paid on the closing date of this transaction, regardless of  
10 whether the terms of the transaction provide for payment  
11 over time, any holdback of funds, or for reduction or other  
12 downward adjustment of gross compensation amount in the  
13 future."

14 In other words, Mr. Carpenter's state of  
15 mind at the time was this new element to his valid,  
16 enforceable, oral agreement. Had you ever seen that before,  
17 heard of it before?

18 A. No.

19 Q. But he says his compensation would be fully earned  
20 and paid at the closing date. And only at the closing date,  
21 correct?

22 A. That's what it says, yes.

23 Q. And that was the November 15th, 2017 memo?

24 A. Yes.

25 Q. But he didn't work for Southwest Housing

1 Management on that date, on the date of the closing,  
2 correct?

3 A. Correct.

4 Q. And he already sued you before the closing?

5 A. That's right.

6 Q. Correct?

7 A. Yes.

8 Q. And if that was Mr. Carpenter's understanding of  
9 what his valid, enforceable, oral agreement was, that he  
10 would fully earn his compensation on the date of the closing  
11 and get paid at the closing, that he would not have  
12 fulfilled the hug/handshake deal that he made, correct?

13 A. Yes.

14 (Sotto voce discussion held)

15 Q. It's terrible when your son turns out smarter than  
16 you.

17 And let me call your attention to Paragraph  
18 7.

19 A. Is this of the same agreement?

20 Q. The same separation agreement attached to the  
21 November 15th, 2007 Email.

22 Mr. Carpenter wrote, "In order to induce  
23 employee to enter into this agreement, the Potashniks,  
24 jointly and severally, hereby personally and  
25 unconditionally guarantee payment to employee of all amounts

1 provided for herein strictly in accordance with this  
2 agreement."

3 Did I read that correctly?

4 A. You did.

5 Q. Mr. Carpenter says the inducement for him to enter  
6 into this agreement, the separation agreement that he wrote,  
7 was your personal guarantee that he'd be paid and  
8 Mr. Potashnik's personal guarantee that he'd be paid,  
9 correct?

10 A. Correct.

11 Q. Did you ever give Mr. Carpenter a personal  
12 guarantee that he would be paid --

13 A. No.

14 Q. -- any amount of money at any time?

15 A. No. No.

16 Q. Would you ever have given him a personal  
17 guarantee?

18 A. No.

19 Q. Therefore, you didn't induce him to enter into  
20 that agreement?

21 A. Correct.

22 Q. Or any agreement?

23 A. That's right.

24 Q. And did Mr. Potashnik ever tell you that he agreed  
25 to personally guarantee any payments for Mr. Carpenter?

1 A. No.

2 Q. Any severance payments, any bonus payments, any  
3 hugs, handshakes, or anything else?

4 A. No personal guarantee ever.

5 Q. All right. Thank you.

6 Now, with regard to the recorded telephone  
7 conversation, you did not know at the time that you were  
8 being recorded?

9 A. Right.

10 Q. But Mr. Carpenter had to know because he was  
11 recording the conversation?

12 A. Correct.

13 Q. I counted -- and Mr. Carpenter transcribed the  
14 conversation, correct?

15 A. Yes.

16 MS. GIBSON: I'm going to object to this as  
17 leading as to what you count -- as to what he counted.

18 MR. L. FRIEDMAN: Just laying a foundation.  
19 But, okay --

20 MS. GIBSON: He said, "I counted."

21 THE COURT: All right. It's not leading  
22 yet.

23 Go ahead, Mr. Friedman.

24 Q. (By Mr. L. Friedman) You didn't transcribe the  
25 conversation?

1 A. I did not.

2 Q. Okay.

3 I did count 58 times that Mr. Carpenter had  
4 a chance or spoke during the conversation. And you can take  
5 my word for it or counsel can, or you can count the number  
6 of times yourself.

7 A. I'm going to count.

8 Q. All right.

9 A. Okay, I'm not going to count.

10 Q. The number of times Mr. Carpenter spoke during  
11 that conversation?

12 A. I'm not going to count. Sorry.

13 Q. All right.

14 MR. L. FRIEDMAN: Did we admit that as an  
15 exhibit?

16 THE COURT: Is it already in? It's already  
17 in.

18 MS. GIBSON: Oh, that was pre-admitted by  
19 agreement.

20 MR. L. FRIEDMAN: You have it up there?

21 THE WITNESS: Yes, I do.

22 Q. (By Mr. L. Friedman) So you can either take my  
23 word that it's 58 times or we'll just call it a lot of times  
24 that Mr. Carpenter had a chance to speak.

25 Do you have it in front of you?

1 A. I do.

2 Q. Okay.

3 Now, when Ms. Gibson was examining you, she  
4 had the chance but didn't go through every one of these  
5 times when you spoke, but it's your understanding that JC  
6 means Jeff Carpenter, correct?

7 A. Yes.

8 Q. And CP means?

9 A. Myself, Cheryl Potashnik.

10 Q. No Geiser.

11 A. Right.

12 Q. All right.

13 And during the course of that conversation,  
14 did you ever agree to give Jeff Carpenter a severance bonus,  
15 a pay-to-play bonus -- I forgot what she called it.

16 MR. J. FRIEDMAN: Pay to stay.

17 Q. (By Mr. L. Friedman) -- pay-to-stay bonus or  
18 anything of that sort?

19 A. I offered to give him a hundred and fifty thousand  
20 dollars in additional severance.

21 Q. You offered to give Jeff Carpenter a hundred and  
22 fifty thousand dollars in addition to the contractual  
23 severance that you paid him, that Southwest Housing  
24 Management paid him, in accordance with his -- the terms of  
25 his employment contract?

1 A. Yes.

2 Q. And during this conversation, on Page 2, three CPs  
3 from the bottom where it starts with "And then", you want to  
4 just read the CPs -- CP there? You can read it out loud.  
5 One of us has to read it out loud.

6 A. Starting with "And then"?

7 Q. Yeah, Cheryl Potashnik says on the conversation.

8 A. "And then that's something you would have a legal  
9 right to have. And then, you know, like I've told you  
10 before when we were on the phone with Keith, I've got to be  
11 able to see some preliminary on how this deal is going to  
12 shake out before I can start making commitments and go above  
13 and beyond that, because I need to make sure that when all  
14 is said and done and it shakes out and everybody else gets  
15 paid that Brian and I have a certain amount of money that we  
16 can put towards our defense."

17 Q. And after you said that, what did Mr. Carpenter  
18 say?

19 A. "Right."

20 Q. He says, "Right."

21 A. Right.

22 Q. And then you say?

23 A. And until I know that I have -- sorry. "And until  
24 I know that I have that, I'm not making anymore commitments.  
25 I did not know that. Maybe within the next three to



1 four weeks. "

2 And then it's inaudible, so --

3 Q. Okay.

4 And then Mr. Carpenter, who knows the  
5 conversation's being recorded, says?

6 A. "Right. "

7 Q. And then you say?

8 A. "But you have to understand that  
9 there's investment banker fees, there's transfer fees on the  
10 debt, there's legal fees, there's resized escrow costs, you  
11 know, Skyline alone, Bank of America asking for \$3 million. "

12 That's Parmer. It's supposed to say Parmer  
13 a big part of a million dollars when we close.

14 Q. Okay.

15 And then I -- we're not going to go through  
16 all of this, but I want to go through the -- the next page  
17 on top. Mr. Carpenter says?

18 A. "Uh hmm. "

19 Q. "Uh hmm. "

20 And then you say -- let's just make this  
21 the last one. Let's just read the highlighted portions.  
22 You say to Jeff Carpenter?

23 A. And the last thing I want to do is make  
24 commitments -- make you commitments that can't be kept,  
25 because then you and I are going to get sideways and I don't

1 want to do that. And I don't want i n a u d i b l e. But I really  
2 want to work with you and make sure you're taken care, but  
3 it's not going to be -- there's no point in making promises  
4 that I can't keep and then we end up sideways with each  
5 other.

6 Q. Okay. And then -- and then Jeff Carpenter says,  
7 "Yeah, yeah, I understand that. Just the way this reads  
8 doesn't cover that."

9 And then just go to the next one.

10 A. "That -- that doesn't cover anything having to do  
11 with the sale because you don't have any rights under the  
12 sale. You have rights under your employment agreement."

13 Q. Okay. And what did you mean when you said that,  
14 Mr. Carpenter didn't have any rights under the sale? What  
15 were you trying to convey to him at that time?

16 A. That he didn't have a right -- any kind of right  
17 to anything. That anything paid out of the proceeds of the  
18 sale would have been discretionary at the time that the sale  
19 occurred.

20 Q. Now, Mr. Carpenter had a lot of opportunities in  
21 this telephone conversation to talk, didn't he? You didn't  
22 count them, but there's a lot of CPs.

23 A. A lot of CPs --

24 Q. JCs.

25 A. -- and a lot of JCs, yeah.

1 Q. I'm sorry. There's a lot of CPs and a lot of JPs  
2 [sic].

3 MR. DONOHUE: JC.

4 Q. (By Mr. L. Friedman) A lot of CPs --

5 A. JC.

6 Q. -- and a lot of JCs?

7 A. Yes.

8 Q. And there's four, five, six, seven pages of --  
9 seven, yeah -- seven pages of transcript. Goes on for seven  
10 pages. Lot of JCs.

11 Mr. Carpenter spoke a lot of times in that  
12 conversation, didn't he? At any point in that conversation,  
13 did Mr. Carpenter say to you, "I have a valid, enforceable,  
14 oral agreement with Brian Potashnik. You know that."?

15 A. No.

16 Q. At any point in that conversation, did  
17 Mr. Carpenter say to you, "Cheryl, you know my agreement  
18 with Brian Potashnik. It is A, B, C, D, and E."?

19 A. No.

20 Q. Are you reneging or won't you confirm it?

21 A. No.

22 Q. Had Mr. Carpenter at one -- any time during that  
23 time that he was secretly recording -- said to you, you  
24 know, I get a million dollars out of this deal, I get three  
25 percent off the gross, less reasonable closing costs,

1 etcetera, what would you have said?

2 A. I would have said I don't know where you're  
3 getting that from.

4 Q. Would you have agreed to it?

5 A. No.

6 Q. And did you ever hear Mr. Potashnik agree to  
7 anything like that?

8 A. No.

9 Q. Or did Mr. Potashnik ever tell you he agreed to  
10 anything like that?

11 A. No.

12 Q. And this conversation that Mr. Carpenter secretly  
13 recorded -- on my little chart there -- was November 2nd,  
14 2007, the last day he was paid for working at Southwest  
15 Housing Management?

16 A. Yes.

17 Q. Correct?

18 So, there was no question in your mind on  
19 that day that you had not made a commitment to  
20 Mr. Carpenter, correct?

21 A. Yes.

22 Q. And there was no question in your mind --

23 MS. GIBSON: Object --

24 Q. (By Mr. L. Friedman) -- that you conveyed that, no  
25 commitment, to Mr. Carpenter and he recorded it?

1 MS. GIBSON: Object to the continued  
2 leading.

3 THE COURT: You're still leading the  
4 witness.

5 MR. L. FRIEDMAN: Okay.

6 Q. (By Mr. L. Friedman) What was your clear message  
7 to Mr. Carpenter in the conversation that he secretly  
8 recorded on November 2nd, 2007?

9 A. My clear message was that basically you have  
10 rights under your employment agreement. I'm offering an  
11 additional hundred and fifty thousand dollars in severance,  
12 or however you want to characterize it. And other than  
13 that, we have to wait until the closing and see how  
14 everything shakes out.

15 Q. And you can't make any other commitments?

16 A. Correct.

17 Q. Now, last line of questioning. You have about 23,  
18 24 exhibits in front of you that Ms. Gibson was kind enough  
19 to show you and enter into evidence?

20 A. There's, like, 35.

21 Q. Thirty-five.

22 A. Okay.

23 Q. Is there any evidence on any one of those 35  
24 documents that Cheryl Geiser Potashnik or Brian Potashnik  
25 agreed, orally or in writing, to any employment deal, bonus,

1 salary, new car program, or anything else with  
2 Jeff Carpenter?

3 A. Nothing other than what's in his employment  
4 agreement.

5 Q. Other than the employment contract?

6 A. Correct.

7 Q. Is there any evidence on any of those documents of  
8 a valid, enforceable, oral agreement between Jeff Carpenter  
9 and Brian Potashnik?

10 A. No.

11 MR. L. FRIEDMAN: Nothing further,  
12 Your Honor.

13 THE COURT: Ms. Gibson?

14 MS. GIBSON: Thank you, Your Honor.

15 THE WITNESS: And can I -- can I go to the  
16 restroom?

17 THE COURT: Sure.

18 We'll take our 10-minute break, ladies and  
19 gentlemen. We'll see you back at 3:25.

20 (The jury exited the courtroom.)

21 (Recess taken)

22 (The jury entered the courtroom.)

23 THE COURT: Welcome back and good afternoon  
24 still, ladies and gentlemen.

25 We'll continue. Mr. Friedman had just

1 passed Ms. Geiser as a witness, so it goes back to  
2 Ms. Gibson to ask any follow-up questions, and we'll proceed  
3 when she's ready.

4 **REDIRECT EXAMINATION**

5 BY MS. GIBSON:

6 Q. Ms. Geiser, have you noticed during the course of  
7 this case that I have a bad habit of saying okay after a  
8 witness gives an answer?

9 A. No, I haven't.

10 Q. Okay.

11 A. I mean, you just did it, so now I do notice it.

12 (Laughter)

13 Q. I didn't do it on purpose.

14 You agree with me that it's normal  
15 sometimes for people in conversation to say okay or uh-huh  
16 or right?

17 A. Yes.

18 Q. And -- okay. And that doesn't necessarily mean  
19 that they agree with what the person has just said?

20 A. I think I agree with that in a general sense.

21 Q. And would you agree that the nature of enforcement  
22 of an oral agreement is that it's not in writing?

23 A. Enforcement?

24 Q. I mean, that's why it's oral.

25 A. Enforcement? I don't follow you.

1 Q. If -- if we're talking about an oral agreement,  
2 obviously there's not going to be -- it's not going to be in  
3 writing.

4 A. Correct.

5 Q. With -- with respect to the annual bonuses, you  
6 describe them as discretionary but one end of the formula  
7 says minimum discretionary, correct?

8 A. Yeah, I believe so.

9 Q. Okay. And what does minimum mean to you?

10 A. Minimum means minimum. The -- it's been a long  
11 day. Okay, what does minimum mean? The least possible.

12 Q. The least possible.

13 And even when someone has discretion to set  
14 a bonus, once a number has been relayed to the employee that  
15 discretion has been exercised, correct?

16 A. Can you say that again? I'm sorry. I'm fading.

17 Q. Once -- that's okay. I'll try it -- we'll --  
18 we'll get through this.

19 A. Okay.

20 Q. Once the number has been relayed to the employee,  
21 the discretion has been exercised?

22 A. I don't know that I agree with that statement.

23 Q. Okay.

24 Now, as of October 31st, 2007, Jeff is  
25 staying -- had stayed as long as y'all needed him to,



1 correct?

2 A. He stayed until the end of his employment. We've  
3 been over this a hundred times.

4 Q. Well, okay. You didn't need him anymore. So, at  
5 that point, once someone -- well, let me use a hypothetical  
6 to avoid fights over agreements.

7 If you agree to pay me \$25 to mow your lawn  
8 and I mow the lawn, it's too late at that point for you to  
9 try to back out of our agreement, correct?

10 A. I believe that all agreements have to be agreed to  
11 by both parties. We went through this exhaustively in my  
12 deposition.

13 Q. Right. But if we agreed that I was going to mow  
14 your lawn for \$25, once I've already mowed the lawn it's too  
15 late for you to back out and say you're not going to pay,  
16 right?

17 A. If we agreed to the terms and conditions of you  
18 mowing my lawn and we both agreed and you mowed my lawn,  
19 then I would agree.

20 Q. Okay.

21 With -- with respect to the document that  
22 Mr. Friedman was asking you about where Jeff Carpenter sent  
23 in his effort at a revised separation agreement --

24 A. Yes.

25 Q. Okay. -- the truth is you had already told Jeff

1 he had no legal rights. But at some point you said, "Why  
2 don't you just send something to us", right?

3 A. I'll have to look back at the timeline to make  
4 sure that's correct. Ask me again, please.

5 Q. The truth is that although you already told Jeff  
6 he didn't have any legal rights you told him to just go  
7 ahead and send something to y'all?

8 A. I may have. I don't recall.

9 Q. Okay. And Jeff did that. And I agree with you he  
10 did a terrible job. But Brian Potashnik and yourself had  
11 earlier, before October 31st, promised that you-all would  
12 document his deal in writing. This is way -- I'm talking  
13 about 2006.

14 MR. L. FRIEDMAN: Objection. Assumes facts  
15 not in evidence.

16 THE COURT: She's asking. Overruled.

17 THE WITNESS: I don't recall. But if  
18 there's a document that I can look at to refresh my memory,  
19 I will.

20 Q. (By Ms. Gibson) I believe that you and  
21 Brian Potashnik had orally promised, multiple occasions,  
22 that you-all would have your attorneys document the deal.  
23 Do you recall that?

24 A. I don't recall.

25 Q. Okay.

1                   U l t i m a t e l y,   t h o u g h,   y o u   a s k e d   J e f f   --   t h i s  
2   i s   a f t e r   h i s   --   h e ' s   d o n e   e v e r y t h i n g   a s k e d   o f   h i m,   y o u   t o l d  
3   J e f f   t o   t r y   a n d   p u t   s o m e t h i n g   t o g e t h e r?

4           A.    I   m a y   h a v e.   I   j u s t   s a i d   t h a t.   I   d o n ' t   r e c a l l .

5           Q.    A n d   t h a t   w o u l d   m e a n   t h a t   J e f f   h a s   t o   s c r a m b l e   t o  
6   f i n d   a n   a t t o r n e y   o r   h e   h a s   t o   c o n s u l t   t h e   a t t o r n e y   c a l l e d  
7   A t t o r n e y   G o o g l e,   r i g h t?

8           A.    T o   p u t   s o m e t h i n g   i n   w r i t i n g,   n o.   H e   d o e s n ' t   h a v e  
9   t o   c o n s u l t   a n   a t t o r n e y.

10          Q.    W e l l,   y o u   p u t   i t   o n   J e f f   t o   t r y   a n d   p i e c e  
11   s o m e t h i n g   t o g e t h e r   a n d   h e ' s   n o t   a n   a t t o r n e y,   c o r r e c t?

12                   M R.   L.   F R I E D M A N:   O b j e c t i o n,   a s s u m e s   f a c t s  
13   n o t   i n   e v i d e n c e.

14                   T H E   C O U R T:   O v e r r u l e d.

15                   M R.   L.   F R I E D M A N:   M i s s t a t e d   t h e   w i t n e s s ' s  
16   p r i o r   t e s t i m o n y.

17                   T H E   C O U R T:   S h e   c a n   h a n d l e   t h e   q u e s t i o n s.

18                   I f   y o u   d o n ' t   a g r e e,   t e l l   h e r   y o u   d o n ' t  
19   a g r e e.

20                   T H E   W I T N E S S:   H e   d i d n ' t   n e e d   t o   g e t   a n  
21   a t t o r n e y   t o   p u t   s o m e t h i n g   i n   w r i t i n g.   T h a t   w a s   h i s   c h o i c e  
22   i f   t h a t ' s   w h a t   h e   d i d.

23          Q.    ( B y   M s.   G i b s o n )   O k a y.   W e l l   --

24          A.    I ' m   n o t   a n   a t t o r n e y.

25          Q.    --   i t   l o o k s   f r o m   t h e   --   i t   l o o k s   f r o m   t h e   d o c u m e n t

1 that -- that he tried to make it look more legal than just a  
2 handshake deal, right?

3 A. He tried to make it -- I mean, it was very all  
4 encompassing. I would agree with that.

5 Q. Right. And so, suddenly, just like attorneys do,  
6 they want to deal with all these other things. Like, what  
7 happens if somebody dies, you know, what happens in this  
8 event or that event. And there's -- there's some of that  
9 going on in that proposal, correct?

10 A. Some of what?

11 Q. Just trying to cover various possibilities that  
12 were beyond the handshake deal.

13 A. Well, there was no handshake deal, number one.  
14 And, number two, all agreements have multiple provisions, as  
15 we've been through today, and they have various meanings at  
16 various times to various parties. So I don't know what else  
17 to say about that agreement.

18 Q. Are you aware that legally the parties can agree  
19 to some terms of an agreement and, even if they expect that  
20 there might be some additional terms or try to negotiate  
21 additional terms, a jury or the Court can still enforce  
22 those -- the particular terms that they did agree on?

23 A. You lost me.

24 MR. L. FRIEDMAN: Excuse me. I'm going to  
25 object. This calls for a legal conclusion --

1 THE COURT: Okay.

2 MR. L. FRIEDMAN: -- and it's compound.

3 THE COURT: You're asking for legal  
4 conclusions. And, really, you're going beyond the scope of  
5 his cross.

6 Q. (By Ms. Gibson) You talk about Jeff Carpenter  
7 filing suit before the deal actually closed. Remember that?

8 A. Yes.

9 Q. Okay. But the suit was filed after you had told  
10 Jeff Carpenter that he had no legal rights and might get  
11 zero, right?

12 A. I didn't say you might get zero, but I said that  
13 you have no legal rights, yes.

14 Q. And you can understand why someone might be  
15 concerned that what was going to happen is y'all were just  
16 going to take the money and run?

17 MR. L. FRIEDMAN: Objection. That's  
18 argumentative.

19 THE COURT: Sustained.

20 Q. (By Ms. Gibson) Now, there was a part of that  
21 agreement that said it would not -- that other employee  
22 bonuses would not come off of the payment. Do you remember  
23 that?

24 A. What agreement are you referring to now? What --  
25 are we back to the draft --

1 Q. Well, after --

2 A. -- separation agreement?

3 Q. -- after you told Jeff Carpenter to try and put  
4 something together after he had already stayed as long as  
5 needed, Mr. Friedman was asking you about the part of that  
6 that said it would be without deduction of other bonuses.

7 MR. L. FRIEDMAN: I'm going to have to  
8 object. This misstates the witness's prior testimony. She  
9 didn't say she told Jeff Carpenter.

10 THE COURT: She was saying what she told  
11 you.

12 MR. L. FRIEDMAN: I think she said she  
13 didn't recall.

14 THE COURT: Repeat your question.

15 MR. L. FRIEDMAN: I'm objecting because the  
16 preface to Ms. Gibson's question was after you told  
17 Jeff Carpenter to send me something, and I think she said  
18 she didn't recall.

19 MS. GIBSON: I thought you said you may  
20 have.

21 THE WITNESS: I said, I may have. I don't  
22 recall.

23 MS. GIBSON: Okay.

24 THE WITNESS: I may have.

25 MS. GIBSON: All right.

1 Q. (By Ms. Gibson) That's the document that I'm  
2 referring to.

3 A. Okay, we're back to the separation agreement that  
4 was attached to Jeff's Email. And what is the question?

5 Q. Mr. Friedman was asking you questions where  
6 it said without deduction for -- and I'm paraphrasing  
7 because I don't have it in front of me -- but without  
8 deduction for bonuses or payments to other employees.

9 A. This agreement does not mention anything about  
10 other employees' bonuses that I see in this document.

11 Q. Okay. Well, are you aware that Jeff Carpenter had  
12 been working from a form that Keith Jones provided to him?

13 A. I've become aware of that in the course of this  
14 lawsuit, but --

15 Q. And you're aware that Mr. Carpenter has already  
16 said that in using that form he made a mistake on that  
17 piece?

18 MR. L. FRIEDMAN: Objection. She assumes  
19 facts not in evidence.

20 Q. (By Ms. Gibson) You're aware of that?

21 THE COURT: She's aware or not.

22 THE WITNESS: I know that this came up in  
23 his deposition, and I don't know if he was aware at the time  
24 he wrote this or if he was aware at the time he filed his  
25 initial lawsuit in which he talks about his alleged deal. I

1 don't remember at what point in time he made that mistake.

2 Q. (By Ms. Gibson) And he has made clear that the  
3 formula did deduct other stay bonuses paid to other -- to  
4 other employees?

5 A. I don't think he has made that clear, no.

6 Q. That's the problem --

7 A. I mean, that was his testimony at his deposition.

8 Q. Right. And it doesn't -- in doing so, in making  
9 that correction, it doesn't help Jeff Carpenter's damages.  
10 In fact, it reduces them, correct?

11 A. It just proves that he didn't have a deal. He  
12 couldn't articulate the deal. He didn't have a deal.

13 It changed from this time. It changed,  
14 what, 11 times through the course of these 10 years. His  
15 deal has changed. He said he made a mistake. I don't agree  
16 with that.

17 THE COURT: Answer only the question she's  
18 asking.

19 Q. (By Ms. Gibson) Okay, I understand your position  
20 in this case, Ms. Geiser. But in correcting a mistake and  
21 saying it was to be the opposite, including that bonuses  
22 paid to other employees were to come off, that would  
23 actually reduce Mr. Carpenter's damages, correct?

24 A. Ultimately, yes.

25 Q. Okay. And in making that correction, because



1 that's what happened, he also opens himself up for you-all  
2 to beat him up about it, correct?

3 MR. L. FRIEDMAN: Objection, argumentative.

4 THE COURT: Sustained.

5 Q. (By Ms. Gibson) He had no incentive -- there was  
6 no personal benefit to him to correct that issue to say  
7 that, no, Brian had said the other employee bonuses were  
8 coming off.

9 MR. L. FRIEDMAN: Objection, argumentative.  
10 These are jury arguments, Your Honor.

11 THE COURT: Her question is did he have an  
12 added incentive. She can --

13 MR. L. FRIEDMAN: Calls for speculation.

14 THE WITNESS: I don't know.

15 THE COURT: Her answer is no.

16 THE WITNESS: It's "I don't know".

17 Q. (By Ms. Gibson) Now --

18 MR. L. FRIEDMAN: I actually didn't hear  
19 that.

20 THE WITNESS: I don't know. I don't know.

21 Q. (By Ms. Gibson) Okay.

22 And when you -- when you said you cannot  
23 say what reasonable cost of closing would be, you remember  
24 that?

25 A. Yes.

1 Q. Okay.

2 In this case -- and I went through the  
3 closing memos with you -- we used all of the sellers' listed  
4 closing costs, correct?

5 A. All of -- we used it in what context?

6 Q. We deducted every single seller's closing costs in  
7 our calculation of the net proceeds to seller.

8 A. When we were going through your calculations?

9 Q. Right.

10 A. Yes.

11 Q. Okay. So we just accepted everything that  
12 defendants claimed as a closing cost.

13 A. Okay.

14 Q. All right. And so we didn't -- we didn't even try  
15 to assess what was reasonable or what was normal. We just  
16 accepted all closing costs, correct?

17 A. That's fine, but I think that's different than  
18 where Larry was going when he was questioning me.

19 MR. L. FRIEDMAN: Mr. Larry.

20 MS. GIBSON: Pass the witness.

21 THE COURT: All right.

22 Mr. Friedman?

23 MR. L. FRIEDMAN: I have nothing further,

24 Your Honor.

25 THE COURT: Thank you, Ms. Geiser. You can

1 have a seat.

2 THE WITNESS: What do I do with these  
3 documents?

4 THE COURT: You'll leave those there.  
5 Are you getting the next witness?

6 MS. GIBSON: Yes.

7 (The witness entered the courtroom.)

8 THE COURT: All right. Mr. Graf, if you'd  
9 come all the way up here.

10 Is this your witness or Mr. Sanford's?

11 MS. GIBSON: I'm sorry?

12 THE COURT: Is this your witness?

13 MS. GIBSON: It's my witness.

14 THE COURT: Okay. Call your next witness.

15 MS. GIBSON: Plaintiff calls Rick Graf.

16 THE COURT: Mr. Graf, if you'd come all the  
17 way over here behind the court reporter. Don't step up  
18 there until I swear you in. And would you raise your right  
19 hand.

20 (Witness sworn)

21 THE COURT: All right. Have a seat right  
22 here. Ms. Gibson will ask you questions first and then  
23 either Mr. Friedman or Mr. Donohue.

24 Ms. Gibson, whenever you're ready.

25 And, ladies and gentlemen, we'll go about

1 another hour before we break for the day.

2 RICK GRAF,

3 having been first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MS. GIBSON:

6 Q. Mr. Graf, will you tell the jury your full name?

7 A. Rick Graf.

8 Q. And where do you work?

9 A. I work at Pinnacle Property Management Services.

10 Q. And you were involved in some of the process  
11 concerning the asset sale to Cascade Affordable Housing that  
12 is the asset sale from the Southwest Housing entities to  
13 Cascade?

14 A. That's correct.

15 Q. Okay.

16 You were involved in due diligence?

17 A. To some degree.

18 Q. And at that -- at that point in time Pinnacle was  
19 the -- the management arm for Cascade. You -- in other  
20 words, you managed -- Pinnacle managed the properties?

21 A. Correct.

22 Q. Okay. And what was your position at that time?

23 A. What period of time are we talking about?

24 Q. At that time in --

25 A. Do you have a date, please?

1 Q. This would have been in, probably, 2 -- and tell  
2 me if it changed, if your position changed -- but this would  
3 have been in the period from 2006 through the summer of  
4 2008.

5 A. Yeah. I was the regional president for Pinnacle's  
6 central division.

7 Q. And were you one of the highest level people for  
8 that division?

9 A. Yes.

10 Q. And you met Jeff Carpenter at some point?

11 A. Correct.

12 Q. And you -- I'm not the saying the jobs were  
13 identical, but you essentially had the equivalent of  
14 Jeff Carpenter's job for Pinnacle.

15 A. The positions were similar.

16 Q. Okay.

17 And you were already in place and Pinnacle  
18 was pretty happy with you?

19 A. Presumably so.

20 Q. Okay. And they're still happy with you,  
21 obviously.

22 A. I've been there for a long time.

23 Q. Okay.

24 And so, as a result, there was no need for  
25 Pinnacle to bring on someone in Jeff Carpenter's position

1 because you were already doing that job.

2 A. It would have been a duplicative position.

3 Q. Okay.

4 And you were involved in due diligence to  
5 some extent, but in connection with due diligence or the  
6 asset sale in general, did you work with Jeff Carpenter at  
7 times?

8 A. At times.

9 Q. Can you give us some examples of the types of  
10 things you worked together on?

11 A. It's been a long time ago, so my memory is not as  
12 great as it should be on this. But in typical situations we  
13 would have collaborated on personnel matters, coordination  
14 of meetings with those -- with the personnel that was  
15 involved in the portfolio, some site specific activity. I  
16 don't recall exactly what that was, but I would consider  
17 those to be typical collaborations.

18 Q. And who did you, primarily, actually work with on  
19 due diligence items from the Southwest Housing entities?

20 A. There were a variety of people. I wouldn't say  
21 there was a primary person.

22 MS. GIBSON: Pass the witness.

23 MR. L. FRIEDMAN: I have nothing,  
24 Your Honor.

25 THE COURT: All right. Thank you,

1 Mr. Graf.

2 Can this witness be excused?

3 MS. GIBSON: Yes.

4 THE COURT: If you were subpoenaed, you're  
5 released from your subpoena and you're free to leave the  
6 courthouse now. If you'd like to stay and observe the  
7 trial, you can, but you're free to leave the courthouse now.

8 THE WITNESS: Thank you.

9 All right. Ms. Gibson.

10 Y'all, don't stand up back there. I was  
11 just going to swear in the witness.

12 MS. GIBSON: Plaintiff calls Brian  
13 Potashnik.

14 THE COURT: Mr. Potashnik, let me swear you  
15 in before you step up there.

16 THE WITNESS: Okay.

17 (Witness sworn)

18 THE COURT: Have a seat here.

19 BRIAN POTASHNIK,

20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. GIBSON:

23 Q. Mr. Potashnik, in considering an asset sale, when  
24 you were considering selling Southwest Housing entities, did  
25 you consider the potential of a mass exodus of employees?

1           A.     It may have been a consideration but it certainly  
2     was not anything substantial, because it was an asset sale  
3     and it wasn't an employee sale. So we were selling assets.

4           Q.     So you're saying it was not an asset sale, we  
5     weren't selling employees, we were selling assets?

6           A.     No, it was an asset sale. In other words, we were  
7     selling property. So, whether I was part of the sale,  
8     leading up to the sale, or what my participation or anybody  
9     in the company's participation may have been was really not  
10    something that was that important. It may have been  
11    discussed, though.

12          Q.     In considering an asset sale, did you consider  
13    ways to prevent a mass exodus of employees?

14          A.     I don't recall.

15          Q.     Did you consider how to prevent important  
16    employees from leaving?

17          A.     I don't recall.

18          Q.     Do you recall being at your deposition?

19          A.     Yes, ma'am.

20          Q.     Okay. And do you recall at your deposition that  
21    when I asked you --

22                   MR. L. FRIEDMAN: Line and page, please?

23                   MS. GIBSON: This is 33, 12.

24          Q.     (By Ms. Gibson) And I said, "In thinking about a  
25    potential asset sale, did you consider the potential of a



1 mass exodus of employees?" And you said, "No. "

2 A. Very well.

3 Q. And you were pretty adamant about it?

4 A. I'm not changing my answer. I mean, I -- again,  
5 it was not a consideration for me or of any importance to  
6 this --

7 Q. And --

8 A. -- to the asset sale. Because, as I said, we were  
9 selling assets.

10 Q. And consider --

11 A. And we knew when selling those assets that it was  
12 not important to the buyer to have any employees other than  
13 those that were actually on site on the properties.

14 Q. And at your deposition when I asked, "In  
15 considering an asset sale, did you consider ways to prevent  
16 a mass exodus of employees," you said, "No. "

17 A. Correct.

18 Q. And when I asked at your deposition, "Did you  
19 consider how to prevent important employees from leaving,"  
20 you said, "No. "

21 A. That's correct.

22 Q. And when you're saying now it may have been  
23 discussed, is that because you found out that Cheryl Geiser  
24 testified that you-all did in fact discuss those things?

25 MR. L. FRIEDMAN: Argumentative, Your

1 Honor.

2 THE COURT: Overruled.

3 A. No.

4 Q. (By Ms. Gibson) That's not why?

5 A. No.

6 Q. Okay.

7 A. Ms. Gibson, this was 12 years ago, so excuse me if  
8 my memory isn't as good as it should be to tell you exactly  
9 what conversations I had in 2007 and 2006.

10 Q. Well, you were pretty adamant with me at your  
11 deposition when you said no, correct?

12 MR. L. FRIEDMAN: Argumentative, Your  
13 Honor.

14 THE COURT: Sustained.

15 You've asked that question.

16 MS. GIBSON: Okay.

17 Q. (By Ms. Gibson) Do you believe retention of  
18 important employees is important when you're trying to sell  
19 a business?

20 A. No.

21 Q. Did you and Cheryl Geiser discuss the importance  
22 of continuity in connection with potentially selling the  
23 assets?

24 A. No, not that I recall.

25 Q. Are you saying you don't recall one way or the

1 other or are you saying that never happened?

2 A. I don't recall.

3 Q. One way or the other?

4 MR. L. FRIEDMAN: Argumentative.

5 THE WITNESS: I don't recall.

6 MR. L. FRIEDMAN: He's answered the  
7 question.

8 THE COURT: Let her clear up what his  
9 answer is.

10 THE WITNESS: I don't recall any  
11 conversations pertaining to employees that may have occurred  
12 in 2006 or 2007. It's just too long ago. And it was not of  
13 any importance to me or to the buyer of the business or of  
14 the assets to -- to maintain any employees.

15 Q. (By Ms. Gibson) What do you think would happen if  
16 you were trying to sell a business and important employees  
17 leave?

18 A. I think it's to the benefit of the seller because  
19 it reduces their overhead and cost of doing business up  
20 until the time that they transition the assets.

21 Q. Well, this assumes you have a firm -- something  
22 that's definitely going to close. But when you're trying to  
23 make your company attractive as a target for purchase --

24 A. Uh-huh.

25 Q. -- what do you think happens if important

1 employees leave?

2 A. I think it becomes more attractive to a buyer.  
3 It does to me. I'm in the business world now 30 years. And  
4 when I identify an opportunity, it's always a better  
5 opportunity when I can bring in my own staff.

6 Q. Did -- and my question about continuity wasn't  
7 about discussions with employees. I had asked you, Did you  
8 and Cheryl Geiser discuss the importance of continuity in  
9 connection with potentially selling the assets?

10 A. Are you asking me a question? I'm sorry. I  
11 didn't -- I thought you were making a statement. I didn't  
12 get whether that was a question.

13 Q. I thought you had said I don't remember any  
14 discussions with employees about that issue, but my question  
15 was about you and Cheryl Geiser.

16 A. I'm sorry, Ms. Gibson. What is the question?

17 Q. Did you and Cheryl Geiser discuss the importance  
18 of continuity in connection with potentially selling the  
19 assets?

20 A. I don't recall having those discussions.

21 Q. Okay. And you understand, Mr. Potashnik, there's  
22 a difference between I don't recall one way or the other and  
23 I don't recall because that never happened. And so when you  
24 say I don't recall, are you saying --

25 MR. L. FRIEDMAN: Your Honor, this is

1 argumentative.

2 THE COURT: It's not. Let her ask the  
3 question.

4 A. Yes, ma'am.

5 Q. (By Ms. Gibson) So, when you say here I don't  
6 recall, are you saying I don't recall one way or the other  
7 or are you saying I don't recall, that never happened?

8 A. I don't recall one way or the other or I don't  
9 recall, that never happened, to me, are one in the same.

10 Q. Okay.

11 Did you and Cheryl Geiser discuss ways to  
12 retain employees and keep them from jumping ship in  
13 connection with the potential asset sale?

14 A. I don't recall.

15 Q. Do you recall discussing with Cheryl Geiser  
16 providing sales-proceeds bonuses to important employees as  
17 an incentive for them to stay on despite the pending asset  
18 sale?

19 A. No. We never had those discussions.

20 Q. Do you recall discussing with Cheryl Geiser  
21 bonusing employees out of the asset-sale proceeds as an  
22 incentive to keep people on?

23 A. No.

24 Q. That never happened?

25 A. I don't recall.

1 Q. Well, you said no.

2 A. Bonuses were never discussed. I can tell you  
3 that.

4 Q. You never discussed bonus ing any employees out of  
5 the sale proceeds with Cheryl Geiser?

6 A. No.

7 Q. Do you recall telling Jeff Carpenter that you  
8 needed him to be committed and keep his eye on the prize in  
9 connection with an asset sale?

10 A. No.

11 Q. Do you deny that?

12 A. I don't recall ever having that discussion.

13 Q. In fact, your claim is that that never happened,  
14 correct?

15 A. My claim is exactly how I'm testifying today in  
16 court. Under my sworn testimony, I do not recall any  
17 conversations having to do with bonuses with Cheryl Geiser  
18 or with anybody in the company. That was not something that  
19 I recall ever having under the circumstances.

20 Q. Do you recall telling Jeff Carpenter that if he  
21 would stay committed and stay on, keep his eye on the prize,  
22 that he would be paid a lucrative bonus from the sales  
23 proceeds?

24 A. No.

25 Q. Are you saying that never happened?

1           A.    No.  I'm saying that I don't recall any  
2           conversations having to do with anything regarding bonuses.

3           Q.    Do you recall at your deposition when I asked you,  
4           "QUESTION:  Do you recall telling Jeff that you needed him  
5           to be committed and keep his eye on the prize in connection  
6           with an asset sale and that he would be paid a lucrative  
7           bonus from sale proceeds?"  You said, "Never happened."

8           A.    May have never happened.

9           Q.    Okay.

10          A.    I mean, as far as I know --

11          Q.    So --

12          A.    -- as I'm telling you today, Ms. Gibson.  And I  
13          respectfully would like you to know that these are  
14          conversations that you are trying to put words in my mouth  
15          that may have occurred over 10 years ago.  And to the best  
16          of my recollection there was no discussion with  
17          Jeff Carpenter or any employee regarding anything that has  
18          to do with bonuses.

19          Q.    Okay.

20                        Would you take a look, please, at  
21          Plaintiff's Exhibit 1?

22                        THE COURT:  You're probably going to have  
23          to help him there.

24                        THE WITNESS:  I -- if you have a copy of  
25          it, I'll look at it.

1 THE COURT: It's up there. It's probably  
2 at the very beginning.

3 But you may want to come and find it for  
4 him.

5 THE WITNESS: Is this the secretly recorded  
6 conversation?

7 MS. GIBSON: Yes --

8 THE WITNESS: Okay.

9 MS. GIBSON: -- it is.

10 THE WITNESS: Yes.

11 Q. (By Ms. Gibson) Found it?

12 A. Yes.

13 Q. You say during part of that -- this is -- you are  
14 VP. Do you see your part of the conversation at the top of  
15 Page 2?

16 A. Yes, ma'am.

17 Q. Okay.

18 And when you're talking to Jeff, you say,  
19 "Um, and as far as our agreement goes where we compensate  
20 you, as we promised, it's going to depend on where we end up  
21 in all of this."

22 A. Yes, ma'am.

23 Q. Okay. And when you say "where we end up in all of  
24 this", you are talking about the asset sale?

25 A. I'm talking about the asset sale or the actual



1 refinancing of the properties.

2 Q. Okay.

3 A. Because at the time, as you recall from prior  
4 testimony, the company was not performing financially. The  
5 properties were losing money and there was the potential  
6 that we would be in a bankruptcy. So reality was, was that  
7 we had no idea whether we would have a sustainable business  
8 or not.

9 Q. And those are not concerns you had until 2007,  
10 correct?

11 A. No. Those were concerns that we've always had.  
12 When you run and operate a business, you're always concerned  
13 about making sure that you have enough money coming in to  
14 meet the expenses and obligations of the business and the  
15 money that goes out.

16 Q. So let me ask it a different way. At the time the  
17 letter of intent was signed with Cascade, you did not have  
18 the same level of concern you did in November of 2007 about  
19 where you would end up personally in all of this?

20 A. That's not correct.

21 Q. You had the same concerns?

22 A. Yes, ma'am.

23 Q. Okay. Well, all right, we'll keep going.

24 But you -- but you hear -- you testified, I  
25 thought, that you never discussed any bonuses with

1 employees; is that --

2 A. That's correct.

3 Q. But here you're talking about your agreement where  
4 we compensate you as promised and it depends on where we end  
5 up in the asset sale?

6 A. Yes, ma'am.

7 And if you'd like me to explain, in that  
8 conversation I am referring to the one agreement and the  
9 only agreement that exists between Jeff Carpenter and myself  
10 and Southwest Housing, and that is his employment agreement.  
11 And at the time, that agreement was in jeopardy over the  
12 fact that the company was losing significant amounts of  
13 money and may not be able to honor its commitments under the  
14 employment agreement.

15 Q. Well, there's nothing, you know, under the  
16 employment. You're talking about the written employment  
17 agreement?

18 A. Yes, ma'am. That's what I'm referring --

19 Q. Okay.

20 A. -- to in the conversation.

21 Q. You're saying -- Jeff's calling you because he's  
22 upset that the bonus out of the sales proceeds and the  
23 annual bonuses weren't addressed in the proposed severance  
24 from Southwest Housing, right?

25 MR. L. FRIEDMAN: Objection.

1 THE WITNESS: No.

2 MR. L. FRIEDMAN: Excuse me.

3 Objection, assumes facts not in evidence.

4 We haven't heard from Mr. Carpenter.

5 THE COURT: We're not going to call  
6 witnesses back and forth after one. He can answer the  
7 question or say he doesn't know.

8 THE WITNESS: No.

9 Ms. Gibson, to clarify exactly what that  
10 statement refers to, it is the one and only agreement that  
11 exists between Jeff Carpenter and Southwest Housing and the  
12 related entities, either orally or in writing. And that is  
13 the agreement that I was under the impression and the reason  
14 why I answered the question as I did; that I felt was in  
15 jeopardy of being honored because the company was  
16 potentially going to go into bankruptcy.

17 Q. (By Ms. Gibson) So, according to your theory, what  
18 you're referring to is you're saying, Jeff, as far as our  
19 agreement goes where we compensate you as we promised,  
20 you're saying you might not pay his salary?

21 A. It's not a theory. It's reality. We did not  
22 know, because of the fact that the company was not  
23 performing per our projections, whether or not we could  
24 honor any of the written employment agreements that we have  
25 with Jeff Carpenter or anybody else.

1 Q. As of the time of this conversation,  
2 Jeff Carpenter's work for Southwest Housing was over.

3 A. Whether it was over or not is not relevant to the  
4 fact that if there was a written agreement, which there was,  
5 his employment agreement -- which may or may not have been  
6 fully honored due to the fact that we had cash flow  
7 issues -- obviously, there was some question as to the  
8 sustainability of the business to be able to honor that  
9 employment agreement.

10 Q. But at this point --

11 A. Which is the only agreement that exists.

12 Q. But at this point Jeff Carpenter is not going to  
13 be drawing a salary anymore under the written agreement,  
14 correct?

15 A. I -- I don't know what the terms of his employment  
16 agreement were to be -- his employment agreement was  
17 executed at the time of his employment in 2004.

18 Q. But by October 31st, Jeff Carpenter was no longer  
19 needed, due to the November 1st transfer of management to  
20 Pinnacle, correct?

21 A. I don't think that it was -- I don't think anybody  
22 was needed at the time, Ms. Gibson. I don't think it was a  
23 relationship that was exclusive to any one employee.

24 Q. But, Mr. Potashnik, if you're saying you're  
25 referring to the employment agreement --

1 A. Yes, ma'am.

2 Q. -- Jeff Carpenter is done. He's not working for  
3 the entities anymore.

4 A. Right, but he --

5 Q. He's not drawing --

6 A. I --

7 Q. -- a salary. He's not drawing --

8 A. I get it. I understood. But what I'm pertaining  
9 to is the fact that under the agreement that Mr. Carpenter  
10 had with the company and the only agreement he had with the  
11 company there was still money that was owed to him under  
12 that employment agreement. It may not have been salary, as  
13 you point out, but it may have been other compensation  
14 within that agreement.

15 Q. You're talking about annual bonuses that were owed  
16 to Mr. Carpenter?

17 A. It possibly could have been. But, again, as I  
18 told you in my deposition, that was not an agreement that I  
19 had reviewed or continually looked at.

20 Q. Okay.

21 A. But, obviously, what I'm telling you now is that  
22 that is the agreement that I am referring to. When I  
23 said -- excuse me. Could you please keep that up there so I  
24 can explain this to you?

25 Q. Do you need --

1           A.    As far as our agreement goes, which is the  
2   employment agreement, where we compensate you as promised,  
3   which is the written and duly executed employment agreement,  
4   it's going to depend on where we end up. And by that I  
5   meant where we end up as a sustainable business being able  
6   to meet our obligations, one of which was our employment  
7   agreement with Mr. Carpenter.

8           Q.    And so you believe he may have -- was owed annual  
9   bonuses. That may have been what you were talking about?

10          A.    I don't believe anything other than we honor and  
11   continued to honor and have never had a lawsuit from an  
12   employee over compensation anything that was written and in  
13   their employment agreement.

14          Q.    Okay.

15                        So you deny that you were referring to any  
16   bonus out of the asset-sale proceeds; is that correct?

17          A.    Let me repeat myself. There was never any  
18   discussions or intent to pay any bonuses, as far as I was  
19   concerned. Any compensation that was given to anybody out  
20   of the proceeds from the sale would have been a severance,  
21   not a bonus. And a severance was our appreciation for any  
22   time and effort, at our discretion, that we felt that  
23   employee may have been responsible for for the success of  
24   our company and its ongoing business.

25          Q.    Will you turn to Page 3, please?

1 A. Page 3 of what? What document?

2 Q. Page 3 of the same conversation.

3 A. Oh, the secretly recorded conversation. Okay.

4 Q. Okay.

5 You say, "I mean, I'm telling you that  
6 we're -- we're going to dig ourselves out of this thing and  
7 then hopefully, you know, at the end of the day, get  
8 something out of it from Cascade and get the deal closed and  
9 pay the costs that we have to defend ourselves and have  
10 money left over so that we can, you know, give you a bonus,  
11 give Sara a bonus, give Keith a bonus."

12 And you heard Keith Jones testify that  
13 there was a program of bonuses to get people to stay?

14 A. No. I -- I heard Keith Jones testify that there  
15 was no stay bonus. Because I have never heard that  
16 expression until you made it up here at trial or prior to  
17 trial. There's no --

18 Q. You've never heard of a stay bonus?

19 A. I never heard stay bonus, no. I never have.

20 But that being said, the bonuses that you  
21 refer to Keith Jones referred to as severance, which is what  
22 I referred to it as and which is what it was. And that was  
23 only in the event that there was any proceeds left over, as  
24 Cheryl pointed out, from the sale of the assets.

25 Q. So, you heard Keith Jones explain that when he

1 spoke about the severance bonuses those were the same --

2 A. No, no, no.

3 Q. Sir, let me finish answering [sic] my question,  
4 please, okay.

5 You heard Keith Jones testify that the  
6 severance bonuses were the same thing as what I was calling  
7 the stay bonuses?

8 A. No, that's incorrect.

9 Q. That's incorrect?

10 A. He didn't say that. He said what you stated as a  
11 stay bonus was in fact severance.

12 Q. He testified that he got that severance as an  
13 incentive to stay. Do you recall that?

14 A. The severance, not severance bonus as you --

15 Q. The amount in that severance --

16 A. -- term it.

17 Q. -- was his --

18 A. Excuse me.

19 Q. -- incentive to stay?

20 A. Ms. Gibson, you are not going to get me to call  
21 something that is severance a bonus because there were no  
22 bonuses.

23 Q. The truth is the bonuses from the asset-sale  
24 proceeds to get Sara and Keith and Jeff Carpenter to stay is  
25 exactly what you are talking about when you say -- refer to



1 our agreement and compensate Jeff Carpenter as promised.

2 A. No, that is not the truth.

3 In fact, could you go back to the last  
4 statement you had on Page 3 so I can clarify exactly what it  
5 is that you pointed out from my prior statement?

6 Q. You -- you've already testified that it was only  
7 per the written agreement.

8 A. No. I am saying -- could you please put it back  
9 up so I can explain it?

10 THE COURT: It is her turn.

11 MS. GIBSON: You have it in front of you,  
12 Mr. Potashnik.

13 THE WITNESS: I can't even pay my bills.  
14 I'm trying to stay out of bankruptcy. I have Bank of  
15 America calling me now. They're telling me they're ready to  
16 put the company and me and Cheryl personally into  
17 bankruptcy.

18 Okay, so I would just want to clarify  
19 the fact that in the statement that you took out two  
20 sentences. If you look at the statement in its entirety,  
21 you'll see exactly what it is that I'm referring to.

22 Q. (By Ms. Gibson) Mr. Potashnik -- and I'm not going  
23 to show this part so we don't get into a spat, but --

24 A. That's okay.

25 Q. -- it was only about a month or so before this

1 conversation that you were indicted, correct?

2 A. I -- I don't recall.

3 Q. Do you recall that it happened --

4 MR. L. FRIEDMAN: Objection, Your Honor.  
5 It's another violation of the limine motion.

6 THE COURT: It is not. Overruled.

7 Q. (By Ms. Gibson) You talked, at the bottom of  
8 Page 3, about concerns about that, about the indictment.

9 MR. L. FRIEDMAN: Same objection.

10 THE COURT: Overruled.

11 And, by the way, you can have a running  
12 objection on all of that.

13 MR. L. FRIEDMAN: All right. Thank you.

14 Q. (By Ms. Gibson) Do you see that was suddenly a  
15 concern?

16 A. Obviously, it would have been a concern, but it  
17 had nothing to do with any agreements.

18 Q. Well, you're explaining to Jeff Carpenter your  
19 concerns that you might not be able to honor your agreements  
20 and pay him as promised, correct?

21 A. I'm expressing my concern that the business was  
22 not operating at a point where it could pay its expenses  
23 under his employment agreement. Any agreement that I was  
24 referring to, as I pointed out, was his employment  
25 agreement. And anything that you term "bonus" or "stay

1       "bonus" was a severance that was being paid at our discretion  
2       subject to the success and proceeds that would be available  
3       after the sale.

4           Q.     So, when you testified earlier that you had no  
5       discussions with employees about bonuses from the asset  
6       sale --

7                   MR. L. FRIEDMAN:   Asked and answered,  
8       Your Honor.

9                   THE COURT:   She hasn't gotten her question  
10      out yet.

11                  Go ahead, Ms. Gibson.

12           Q.     (By Ms. Gibson) Before we went over this  
13      transcript, you had testified that you had no discussions  
14      with employees about bonuses --

15           A.     None that --

16           Q.     -- out of --

17           A.     -- none that I recall.

18                  THE COURT:   Let her finish her question.

19                  THE WITNESS:   It's the same question.

20                  MR. L. FRIEDMAN:   Everybody has to  
21      participate.   Let me be the objector.   Thank you.

22                  THE COURT:   She still hadn't gotten her  
23      question out.

24                  MR. L. FRIEDMAN:   I'm waiting.   I didn't  
25      want to waste a stand-up/sit-down.

1 THE COURT: That's right.

2 Q. (By Ms. Gibson) So, Mr. Potashnik, you testified  
3 earlier that you had no discussions about bonuses from the  
4 sale proceeds with employees, correct?

5 MR. L. FRIEDMAN: Objection, asked and  
6 answered.

7 THE COURT: Overruled.

8 THE WITNESS: To the best of my  
9 recollection, I do not recall having any discussions  
10 regarding bonuses. And as I stated, it was never agreed or  
11 intended to pay anybody anything other than severance.

12 Q. (By Ms. Gibson) But we just talked about a  
13 conversation in which you specifically discussed paying  
14 bonuses out of asset-sale proceeds, correct?

15 A. And as I stated, that was in reference to his  
16 employment agreement.

17 Q. Well, but on the next page you talked about the  
18 asset sale and paying bonuses to Keith and Sara and Jeff out  
19 of asset-sale proceeds --

20 A. Correct.

21 Q. -- correct?

22 A. Which, they would have been owed under their  
23 employment agreements.

24 Q. All right. So the truth is you did have  
25 discussions with employees about bonuses out of asset-sale

1 proceeds?

2 A. No. The only discussions I had were in reference  
3 to whether or not we would be capable of honoring any  
4 agreements that we had with those employees as it pertained  
5 to their employment agreement.

6 So this conversation that you point out has  
7 references to agreements. That agreement is the employment  
8 agreement under which I was obligated as an employer and  
9 Jeff was obligated as an employee to do certain things. And  
10 we honored that agreement, so --

11 Q. I thought -- I thought you just said that Jeff --  
12 according to your interpretation, that Jeff Carpenter was  
13 owed compensation under his employment agreement and that  
14 was what you were talking about.

15 A. That's exactly right.

16 Q. Okay. But then you said you honored the  
17 agreement.

18 A. Well, at the time.

19 Q. Well, telling someone that they can't honor --

20 A. Jeff rejected the severance that was offered to  
21 him under his employment agreement and any discretionary  
22 bonuses that were offered to him.

23 Q. The offer the day after he finished his work  
24 toward the asset sale was that he had to release all claims  
25 in exchange for salary he had already earned and was owed

1 and some PTO and that's it.

2 A. That's incorrect. He was offered and rejected a  
3 hundred and fifty thousand dollars of severance.

4 Q. That was later. The first document sent to Jeff  
5 asked him to release all of his rights for just PTO and --

6 A. That document was given to over a hundred  
7 employees and signed happily by each and every one; none of  
8 which have come back to file any kind of grievance against  
9 us.

10 Q. Those severances included the amounts for  
11 incentives to stay --

12 A. No, they did not.

13 Q. -- correct?

14 A. Incorrect.

15 Q. They were significant --

16 A. Absolutely incorrect.

17 MR. L. FRIEDMAN: Objection. Objection,  
18 violation of the limine.

19 THE COURT: He's the one bringing it up.

20 MR. L. FRIEDMAN: She's asking about it.

21 THE WITNESS: It's incorrect. That's  
22 incorrect.

23 THE COURT: Let's stay focused on  
24 Mr. Carpenter, not other employees in that position.

25 Q. (By Ms. Gibson) The severance agreements that you

1 had those employees sign were for -- strike that. The  
2 severance agreements that you had the employees sign, those  
3 included confidentiality clauses?

4 MR. L. FRIEDMAN: Objection. One,  
5 it violates the limine motion. And, two, it's irrelevant to  
6 this case.

7 THE COURT: Sustained at this point.

8 MS. GIBSON: Your Honor, I know you want to  
9 let -- I'm about to head into a different area. I thought  
10 you wanted to let the jurors go early.

11 THE COURT: You should go till a quarter  
12 till.

13 MS. GIBSON: Till a quarter till?

14 THE COURT: Uh-huh.

15 MS. GIBSON: Okay.

16 Q. (By Ms. Gibson) Do you recall telling  
17 Jeff Carpenter at some point that he was not likely to have  
18 a job with the purchaser after the sale?

19 A. I don't recall.

20 Q. You don't recall or that didn't happen?

21 A. I don't recall.

22 Q. Do you recall at your deposition when I asked you  
23 you this question? I said, "Do you recall telling  
24 Jeff Carpenter at some point that he wasn't likely to have a  
25 job with the purchaser after the sale?" You said, "No." I

1       said, "Do you deny that?" You said, "Yes."

2           A.     Yes. That's still my answer.

3           Q.     Are you changing your mind now?

4           A.     No. I'm saying I don't recall and it didn't  
5     happen.

6           Q.     Okay. You're saying I don't recall --

7           A.     As far as I can recall --

8           Q.     -- that never happened?

9           A.     -- that conversation didn't happen, Ms. Gibson.

10          Q.     Okay.

11          A.     I don't know how else to answer it. I'm sorry.

12          Q.     Do you -- and you just heard from Rick Graf. He  
13     was the highest level management person for Pinnacle. You  
14     heard him testify just now?

15          A.     Yes, ma'am.

16          Q.     Okay. Sorry. I can't see who's here during  
17     testimony.

18          A.     I'm sorry? I didn't understand what your last  
19     statement was.

20          Q.     Oh, I just asked because I can't see who's here  
21     during testimony.

22                         And Rick Graf essentially had the  
23     equivalent position as Jeff Carpenter.

24                         Do you recall telling Jeff Carpenter that  
25     he likely would not have a job because the purchaser's



1 management company already had someone in Jeff's position?

2 A. As I just stated, I don't recall having any  
3 conversation with any employees as to whether or not they  
4 were going to be retained by the new company. And, in fact,  
5 the only conversations that I had were uniform to all  
6 employees that Cascade was going to evaluate the employees  
7 and make their own decision as to who they wanted to keep  
8 and who they didn't.

9 So, could Jeff Carpenter have been a party  
10 to that mass communication to all of the employees? It's  
11 quite possible. Could the conversation have never taken  
12 place? Yes.

13 But it was very clear that anybody who was  
14 going to stay with the company had to be interviewed by the  
15 new company, and it was up to and incumbent upon the new  
16 business to make a decision as to whether or not they wanted  
17 those people to stay with them.

18 Q. Mr. Potashnik, so, with respect to my original  
19 question and you said you don't recall, that's a "no, never  
20 happened" answer, right?

21 MR. L. FRIEDMAN: Objection.  
22 Argumentative, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: I don't understand the  
25 question, Ms. Gibson.

1 MS. GIBSON: Okay.

2 THE WITNESS: I'm sorry.

3 MS. GIBSON: I'll ask it again.

4 THE WITNESS: Okay. Please.

5 MS. GIBSON: You talked for a while after.

6 Q. (By Ms. Gibson) Do you recall --

7 A. Excuse me?

8 Q. I said I'll ask it again. You talked for a while  
9 after.

10 Do you recall telling Jeff Carpenter that  
11 he likely would not have a job because the purchaser's  
12 management company already had someone in Jeff's position?

13 A. I don't recall having any conversations with any  
14 employees directly pertaining to whether or not they would  
15 be employed. And it would be incumbent upon them, if they  
16 were going to be employed, to interview with the new  
17 company; and it was up to the new business whether or not  
18 they wanted to keep that employee.

19 And if there was a discussion with  
20 Jeff Carpenter it would have been the same thing that I told  
21 every employee, Ms. Gibson. I don't know how else to put  
22 it. This was -- this was over 10 years ago, and there was  
23 no hiding the fact that any employee that was going to stay  
24 with the company had to go through the process of being  
25 interviewed with the new company.

1 Q. So, even though it was 10 years ago, when I asked  
2 you this question at your deposition, "Do you recall telling  
3 Jeff Carpenter that he likely would not have a job because  
4 the purchaser's management company already had someone  
5 in Jeff's position," you said with confidence, "No, it never  
6 happened."

7 MR. DONOHUE: What page and line are you  
8 on, Ms. Gibson?

9 MS. GIBSON: Thirty-seven.

10 THE WITNESS: To the best of my  
11 recollection, that conversation, as stated I here today and  
12 as I stated in my deposition, never happened. And if  
13 it did, it happened under the context as it did with all  
14 employees.

15 Q. (By Ms. Gibson) Do you recall asking  
16 Jeff Carpenter to help you identify key employees that you  
17 wanted to keep on, despite a potential for an asset sale?

18 A. No. I don't recall.

19 Q. And saying, no, you don't recall, you're saying  
20 it never happened?

21 A. I'm telling you anywhere where I say that I don't  
22 recall, I don't recall --

23 Q. Well --

24 A. -- you know.

25 Q. -- we've gone over that there's a big difference

1 between I don't recall one way or another, it may have  
2 happened, and saying I don't recall 'cause that never  
3 happened.

4 A. I don't know what --

5 MR. L. FRIEDMAN: Your Honor --

6 THE WITNESS: To me there's no difference.

7 MR. L. FRIEDMAN: He's asked. She's asked  
8 and answered. The witness has said to him there's no  
9 difference.

10 THE COURT: Y'all come over here.

11 MR. L. FRIEDMAN: Several times.

12 (Sidebar conference held)

13 Q. (By Ms. Gibson) Okay. Mr. Potashnik, when I asked  
14 you at your deposition, "Do you recall asking Jeff Carpenter  
15 to help you identify key employees that you wanted to keep  
16 on despite the potential for an asset sale," you said, "No,  
17 it never happened", correct?

18 A. Correct.

19 MR. L. FRIEDMAN: That's consist -- wait a  
20 second. It's consistent with what the witness just said.

21 THE WITNESS: Correct.

22 MS. GIBSON: He wouldn't --

23 THE WITNESS: No, I never recalled having  
24 any discussions, as you pointed out from my deposition. I'm  
25 answering the question the same way I did in my deposition,

1 Ms. Gibson. I don't know what else to say.

2 With all due respect, it was 12 years ago.  
3 I don't recall recalling having conversations with any  
4 employees individually about whether or not they would have  
5 jobs or what the situation was, because I didn't know and it  
6 was not incumbent upon me to be the one to either keep them  
7 with the new company or let them go. That was up to  
8 Mr. Graf, who you just had on the stand.

9 Q. (By Ms. Gibson) That wasn't the question we were  
10 talking about. We were talking about --

11 A. Well, I'm trying to answer it so we can keep from  
12 repeating the same question.

13 THE COURT: Let her ask the questions.

14 Q. (By Ms. Gibson) What I have just put up was about  
15 discussions about you wanting input from Jeff Carpenter --

16 A. No, I didn't --

17 Q. -- concerning other employees.

18 A. I didn't. I didn't ask for input.

19 Q. Did you and Cheryl Geiser discuss -- wait. Sorry.  
20 I'm on the wrong page. I'm going backwards.

21 Do you recall telling Jeff Carpenter that  
22 you wanted his input on the amount of sale-proceeds bonuses  
23 to be paid to certain key corporate employees beneath the  
24 executive level?

25 A. No, Ms. Gibson. Again, there were no discussions

1 regarding bonuses. The only thing that would have been paid  
2 to anybody over and above what their employment agreement  
3 called for would have been a severance. And I think  
4 Mr. Jones made that clear. I know that Ms. Geiser made that  
5 clear. And I hope that I am, in my testimony, doing the  
6 same.

7 Q. When I asked you this question at your deposition,  
8 your answer was just, "No, never happened", right?

9 A. Same answer I'm giving today.

10 Q. Do you recall telling Jeff that you wanted his  
11 bonus to be reduced by the key corporate employee bonuses  
12 because that would give Jeff an incentive to choose an  
13 amount that was high enough to keep them, but he wouldn't be  
14 giving his favorite employees some astronomical bonus?

15 A. No. There's -- again, I don't know how many times  
16 I have to answer the question. There were no discussions  
17 regarding anything that was not under a written,  
18 agreed-upon, employment agreement that was offered to  
19 anybody or discussed with anybody other than severance. And  
20 that is my answer in its entirety. As many times as you  
21 want to frame the question or ask the question, let's just  
22 cut to the chase. There was no discussions regarding  
23 bonuses, period.

24 Q. Mr. Potashnik, you know I'm going to continue to  
25 ask the questions --

1 A. Okay.

2 Q. -- because we just showed a transcript where you  
3 used the word "bonuses" about the employees.

4 A. And if it was part and parcel of their employment  
5 agreement, then the discussion may have taken place. If  
6 there was a duly executed employment agreement which had a  
7 provision for a bonus, as I stated, it would have been  
8 honored. And it was a valid and binding agreement that we  
9 would have to address in our operations of the business.

10 Q. All right. So what's the phrase you're using with  
11 duly executed? You're saying something would have to be  
12 duly executed.

13 A. I'm saying an employment contract signed by both  
14 the employer and the employee.

15 Q. So, is it your view that if you make promises to  
16 employees you don't have to honor that unless it's in  
17 writing?

18 A. I never make promises to employees that were not  
19 honored and not in writing.

20 Q. Okay. You said you never made promises that were  
21 not honored and not in writing.

22 A. Correct. What's the question?

23 Q. Are you saying -- I'm just trying to understand  
24 what you just said. Are you saying you never made a promise  
25 that you didn't honor, whether it was oral or written?

1 A. Are you talking about anything specific? I mean,  
2 are you saying, like, in life in general?

3 Q. No, no, no.

4 A. I mean, I don't -- I mean, give me some context  
5 for this question --

6 Q. I'm trying to understand --

7 A. -- so I have a better way of answering it, please.

8 Q. Mr. Potashnik, I'm just trying to understand the  
9 answer you just gave ---

10 A. Well, I'm trying to understand the question.

11 Q. -- where you said --

12 A. Maybe we're having a communication problem.

13 THE COURT: Let her get her question out.

14 Q. (By Ms. Gibson) And your answer was given in a  
15 particular context, so let me try again to understand.

16 A. Please. Thank you, ma'am.

17 Q. Are you saying you believe you can make promises  
18 to employees and you don't have to honor it unless it is in  
19 writing and duly executed?

20 A. No, that's not correct.

21 Q. Okay.

22 Do you agree with me that oral agreements  
23 should be honored?

24 A. Absolutely.

25 Q. What types of oral agreements did you honor? I'm



1 going to exclude severance payments from this question, but  
2 can you give me some examples of oral promises that you  
3 honored with employees while working at Southwest Housing as  
4 far as compensation?

5 A. As far as compensation. Anytime you tell an  
6 employee that they can leave work early, then you should  
7 allow them to leave work early. Anytime you tell them they  
8 can have a day off or a sick day or a special-needs day for  
9 a doctor, emergency, something that they verbally discussed  
10 and asked your consent for without reducing it into writing,  
11 and you -- you grant them the opportunity to leave early or  
12 to take a day off. I mean, those are things that,  
13 naturally, in the course of business as a business owner  
14 that you would do without having to reduce it into a written  
15 contractual form.

16 And, obviously, there becomes a point in  
17 running a business where there's limitation to what can  
18 actually be "can I take the day off" and isn't it in your  
19 best interest and the employee's interest to have it reduced  
20 and agreed upon on its term and conditions in written form.

21 Q. I believe my question was about compensation, so  
22 let me try again.

23 A. Yes.

24 Q. What types of oral promises have you made to  
25 employees with respect to compensation while you were

1 working with the Southwest Housing entities?

2 A. Well, for instance, if somebody said I want to --  
3 I want to take the day off but I don't want to lose the  
4 salary for the day and, you know, I would certainly be  
5 amenable under, you know, circumstances that were out of  
6 that employee's control to not come to work, to pay them for  
7 that day off. I was, I think, very flexible for weddings,  
8 funerals, special occasions, and things in one's life,  
9 emergency circumstances, things that may not have been  
10 traditionally covered by employers or under an employment  
11 agreement to allow them the flexibility of being paid their  
12 salary during that period of time.

13 Q. With respect to bonuses, do you believe oral  
14 handshake agreements are enforceable?

15 A. Can you please explain to me? I don't know what  
16 context you're asking me that question.

17 Q. When it comes to worker bonuses or employee  
18 bonuses, do you believe oral agreements are enforceable?

19 A. I believe that all agreements should be honored,  
20 oral or written. I don't see any distinction between the  
21 two. But I obviously believe that at some level that for  
22 protection for both parties to an agreement it should be  
23 reduced to writing.

24 Does that make sense, Ms. Gibson? Does  
25 that answer your question? I just want to make sure that

1 I'm answering your question.

2 Q. Yeah. I think I understood that one.

3 A. Okay. Good.

4 Q. I'm not going to ask you about details; just in  
5 general. Did you discuss the sale-proceeds bonus with  
6 Keith -- Keith Jones -- at some point in time?

7 MR. L. FRIEDMAN: Objection, relevance.

8 MS. GIBSON: It's part of the program.

9 MR. L. FRIEDMAN: There's no program.

10 THE WITNESS: There's no program. There's  
11 no program.

12 MR. L. FRIEDMAN: Lack of foundation.

13 THE COURT: All right. Fair enough. The  
14 lack-of-predicate objection is sustained.

15 Q. (By Ms. Gibson) You recall Keith Jones talking  
16 about a program to offer bonuses to get employees to stay?

17 A. I recall Keith Jones saying that there was no  
18 stay-bonus program, as you seem to be --

19 Q. I didn't say --

20 A. No, no, no, you are very determined to get the  
21 stay bonus, but the reality --

22 THE COURT: Mr. Potashnik, let her finish  
23 her question.

24 MR. L. FRIEDMAN: Well, he was in the  
25 middle of an answer when she interrupted him.

1 THE COURT: He needs to answer questions,  
2 not comment on her question.

3 Repeat your question, Ms. Gibson.

4 MR. L. FRIEDMAN: So my request is we get  
5 back to question and answer, and she let him --

6 THE COURT: Right.

7 MR. L. FRIEDMAN: -- finish before she  
8 interrupts him, and he let her finish before he interrupts  
9 her.

10 THE COURT: Fair enough.

11 Stay with question and answer.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And that's for both.

14 MS. GIBSON: Absolutely.

15 THE WITNESS: Yes, ma'am?

16 Q. (By Ms. Gibson) You recall Keith Jones talking  
17 about a program in place to offer bonuses to get people to  
18 stay in light of the asset sale, correct?

19 A. No.

20 Q. You don't recall that. All right.

21 A. I recall Mr. Jones saying that there was no  
22 stay-bonus program, but there was in fact potential  
23 severance being paid to employees upon the sale of the  
24 company.

25 Q. Mr. Potashnik, I'm not using the stay bonus or

1 severance. I'm just saying bonus. Bonuses for you --

2 A. Well, there's a -- there's a -- there's a big  
3 difference --

4 Q. I'm just saying --

5 A. -- to me. So I can't distinguish --

6 Q. What word do you want -- what word do you want me  
7 to use?

8 A. Well, it depends on whether or not it's referred  
9 to in the employment agreement as a bonus or if it's  
10 referred to, in fact, by Mr. Jones in his testimony as what  
11 it was, which was a severance.

12 Q. My question is about bonuses offered to employees  
13 to try and get them to stay. You don't like the word  
14 "bonus". What word would you like me to use to --

15 A. Ms. Gibson, your question was about Keith Jones  
16 and what his testimony referred to. And as I pointed out,  
17 his --

18 Q. Well, let me just ask --

19 A. -- testimony referred to the fact that there was  
20 no stay bonus but there was a severance paid to those  
21 employees that were going to be with the company at the time  
22 of the asset sale and beyond --

23 Q. Okay.

24 A. -- if, in fact, Cascade decided to keep them as  
25 employees.

1 Q. Let me try this way. Do you agree that there is a  
2 program in place to identify important employees and offer  
3 them money as an incentive to stay as long as needed to help  
4 make the asset sale happen?

5 A. No.

6 Q. You deny that?

7 A. Yes.

8 Q. Do you believe that businesses must live up to  
9 their agreements with those who have lived up to their end  
10 of the agreement?

11 A. Yes.

12 Q. Do you recall that you asked Jeff Carpenter to  
13 help you take potential purchasers and investors on tour --  
14 I'm sorry -- tours to market the sale of the assets?

15 A. I don't recall that I ever -- ever asked  
16 Mr. Carpenter to do anything outside of what is called for  
17 in his employment agreement. If it was part of his  
18 responsibilities under the employment agreement, it may have  
19 been something that he had been asked to do; but  
20 it certainly was not with anybody that would have been,  
21 quote, unquote, an investor. That was my responsibility. I  
22 mean, I -- I took on a lot of responsibility running the  
23 business, and one of the most important things to me was  
24 personally taking investors.

25 Q. So the answer is -- the answer you gave me --

1 well, let me just do this.

2 It's Page 49, Line 21. When I originally  
3 asked you if you recall that you asked Jeff Carpenter to  
4 help with potential purchasers and investors on tours to  
5 market the sale of assets, you said no, correct?

6 A. That's correct.

7 Q. All right.

8 Why are you making distinctions and saying,  
9 well, I would only have asked him to do what was within the  
10 scope of his employment --

11 MR. L. FRIEDMAN: By the way, that answer  
12 was consistent with the one he gave on the witness stand.

13 THE COURT: Sidebar.

14 THE WITNESS: Okay, but I can -- I'm sorry,  
15 Your Honor.

16 THE COURT: No, go ahead. Answer her  
17 question.

18 THE WITNESS: Okay.

19 The answer to the question is -- and I  
20 think Mr. Graf was a good witness to go on before me, being  
21 with -- buying the company.

22 As the president and owner of the business,  
23 it was my responsibility to make sure that the people that  
24 were responsible for buying the business were personally  
25 taken to sites by myself. Now, if a lower-level management

1 person like a Mr. Graf or somebody even lower than Mr. Graf  
2 was asked to go look at a property, that's a completely  
3 different issue. But as it pertains to actual investors,  
4 that was me.

5 I take pride and responsibility for making  
6 sure that I personally took investors to each and every  
7 property. I knew each and every property. I knew all of  
8 the employees in the company. I pride myself on the fact  
9 that I spent time not just with employees but the residents  
10 of our properties.

11 THE COURT: You have about two minutes  
12 left.

13 Q. (By Ms. Gibson) How many properties did the  
14 organization have in 2007/2008 time frame?

15 A. I don't recall.

16 Q. Was it over a hundred?

17 A. No.

18 Q. Less -- and by property, is that one set of a  
19 property is one apartment complex unit?

20 A. Yes. That's how I would define it.

21 Q. How many units were there?

22 A. I don't recall the exact number of units.

23 Q. Over a thousand?

24 A. Yes.

25 Q. Okay. And it's your testimony you knew each and



1 every one of the tenants personally?

2 A. No. It's my testimony that I knew each and every  
3 employee in most of the properties. And I knew quite a few  
4 of the tenants in the properties because I was on property  
5 much of the time, but I am not making any statement to the  
6 effect that I knew each and every resident of the  
7 properties. That would be impossible.

8 Q. Sorry. I thought that's what you said. Okay.

9 A. No, that's not what I said.

10 MS. GIBSON: I don't think I can use up  
11 another minute.

12 THE COURT: Okay. That's all right.

13 You can have a seat over here,  
14 Mr. Potashnik.

15 Ladies and gentlemen, we'll break for the  
16 afternoon in just a minute. Please remember the  
17 instructions I gave you yesterday.

18 (Jury instructions given)

19 THE COURT: So we'll see you tomorrow  
20 morning at 9:00 o'clock.

21 (The jury exited the courtroom.)

22 (Off the record)

23 THE COURT: We're on the record.

24 DEFENDANTS' OBJECTION AND MOTION FOR MISTRIAL

25 MR. L. FRIEDMAN: I would like to object to

1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Vikki L. Ogden, Official Court Reporter in and for  
4 the County Court at Law Number 5 of Dallas County, State of  
5 Texas, do hereby certify that to the best of my ability the  
6 above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the parties  
9 to be included in the Reporter's Record, in the above-styled  
10 and -numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that the total cost for the  
13 preparation of the Reporter's Record is \$1,474.00 and will  
14 be paid by Friedman & Feiger, LLP.

15 WITNESS MY OFFICIAL HAND this the 12th day of October,  
16 2018.

17  
18  
19 /S/ Vikki L. Ogden

20 VIKKI L. OGDEN, Texas CSR# 6309  
21 Official Court Reporter  
22 Dallas County Court at Law No. 5  
23 600 Commerce Street, Floor 5  
24 Dallas, Tx. 75202  
25 (214)653-6443  
Certification Expires: 12/31/18

## REPORTER'S RECORD

COA NO. 05-19-00238-CV

TRIAL CAUSE NO. cc-08-02072-e FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS

VOLUME 5 OF 14 04/29/2019 6:14:22 PM

JEFFREY CARPENTER, ) IN THE COUNTY CLERK

Plaintiff, )

VS. ) AT LAW NO. 5

SOUTHWEST HOUSING )  
DEVELOPMENT COMPANY, INC., )SOUTHWEST HOUSING )  
MANAGEMENT COMPANY, INC., )AFFORDABLE HOUSING )  
CONSTRUCTION, INC., BRIAN )POTASHNIK and CHERYL )  
POTASHNIK, )

Defendants. ) DALLAS COUNTY, TEXAS

## TRIAL ON THE MERITS

On the 25th day of January, 2018, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Mark Greenberg, Judge presiding, held in Dallas County, Texas

Proceedings reported by machine shorthand.

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## I N D E X

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P R O C E E D I N G S

(January 25, 2018)

THE BAILIFF: All rise.

(Jury ushered in.)

THE COURT: Jurors, please have a seat as you're coming in. Everybody can have a seat.

Welcome back. Good morning, ladies and gentlemen. We'll continue with the trial. We're going to -- first thing we're going to do this morning is present some testimony to you by videotape deposition. And I'll explain what the videotape deposition is to you in just a moment. We'll go about until 10:25 or so before we take a break. We'll take a 15-minute break, but if you need an additional break, just let us know. Our court reporter today is Georgina Ware. She'll be here today and Vikki will be back tomorrow.

A videotape deposition is sometimes when a witness is not able to appear in person in a trial and we play the deposition. The deposition is taken outside the presence of the Court and the jury, but the lawyers are there and the court reporter is there and a videographer is there. The court reporter swears in the witness so that the testimony is under oath. And the court reporter transcribes the proceedings so that we have a record of it.

1                   When we play a videotaped deposition, we ask  
2                   the lawyers to edit the videotape deposition before we  
3                   present it to the jury. So as you see the videotape  
4                   deposition, you'll see edits in it and that's because  
5                   I've asked them to edit it, so that we're not playing  
6                   more than we need to. So you shouldn't make any  
7                   assumptions that the edits are anything diabolical or  
8                   anything like that.

9                   Ms. Gibson, if you'll call your next  
10                  witness.

11                  MS. GIBSON: Plaintiff calls Jeff Richards.

12                  THE COURT: All right. And this will be by  
13                  videotape deposition.

14                  Whenever you're ready.

15                  (Video is playing.)

16                  THE COURT: Oh, and this is -- do we know  
17                  how long -- do you know how long this is?

18                  MR. SANFORD: 13 minutes, Your Honor.

19                  THE COURT: 32 minutes long?

20                  MS. GIBSON: It's --

21                  MR. SANFORD: Yes, sir, 13 minutes.

22                  THE COURT: 13 okay.

23                  (Video is playing.)

24                               JEFFREY RICHARDS,

25                  having been first duly sworn, testified as follows:



DIRECT EXAMINATION

BY MS. GIBSON:

Q. Mr. Richards, would you please tell us your full name.

A. Jeffrey Robert Richards.

Q. And you live and work in Arizona now?

A. That's correct.

Q. And that's where you're giving your deposition from?

A. That's correct.

Q. Would you please briefly describe your educational background?

A. I have a bachelor's degree in finance from the -- from Arizona State University.

Q. And did you attend seminary or divinity school?

A. I took one class.

Q. Okay. You previously worked for American Housing Foundation or one of its affiliates?

A. Correct.

Q. And what was the formal name of the entity you worked for?

A. American Housing Foundation.

Q. Is it okay if I refer to that entity as AHF?

A. Yes.

Q. What was your job title at AHF when -- your last

1 job title at AHF?

2 A. I don't know that I actually had a formal job  
3 title, but if -- if you're interested in my  
4 responsibilities, I spent most of my time trying to  
5 renegotiate some pretty poor financing on some apartment  
6 portfolios that had been acquired actually before I  
7 arrived there. We also spent, towards the end --  
8 actually, Jeff Carpenter, who is the subject of this  
9 proceeding, and I worked pretty closely together, trying  
10 to streamline some operations, you know, kind of retool a  
11 management company. Just trying to fix some problems.

12 Q. Okay. And I take it you know who Jeff Carpenter  
13 is?

14 A. I do.

15 Q. How is it that you first came to know who Jeff  
16 Carpenter was?

17 A. If -- if memory serves correctly, he was  
18 actually referred to American Housing Foundation by some  
19 folks outside the company who knew that we really were  
20 looking for and needed someone with abilities as a  
21 property manager.

22 Q. And do you recall who referred Jeff to y'all?

23 A. Don't remember the name, but I believe it was  
24 actually one of our insurance agents in Denver. It's  
25 been a few years. I don't remember all the names and

1 dates and stuff.

2 Q. That's okay. And once the -- once the referral  
3 was made to AHF, when's the next time -- or what's the  
4 next circumstance in which you met Jeff Carpenter? What  
5 was going on?

6 A. Well, I don't remember. I don't remember the  
7 exact time frame or -- or date or anything, but we would  
8 have contacted him probably -- probably through our  
9 friend that recommended him to just get together for a  
10 meet and greet and see if there was any compatibility or  
11 mutual interest.

12 Q. And ultimately was there compatibility and  
13 mutual interest?

14 A. Yeah. I think we -- we felt like that on both  
15 sides. We -- or -- we certainly did on our side.

16 Q. And so were you involved in efforts to recruit  
17 Jeff Carpenter to come work at AHF?

18 A I was.

19 Q. Who else was involved on the AHF side?

20 A. I know that our president, Steve Sterquell, was.

21 Q. And what was your understanding of who Jeff  
22 Carpenter was working for at the time y'all were  
23 recruiting him?

24 A. I don't remember the exact name of the company,  
25 but it was -- I believe their name was Potashnik.

1 Q. Okay. You understood he was working for the  
2 Potashniks?

3 A. Yes.

4 Q. And then I know you don't recall the date, but  
5 over about what period of time, as in days or weeks or  
6 months or years, did the recruitment efforts last?

7 A. I'm going to -- I'm going to guess that it was  
8 around seven months, maybe eight. But again, I don't  
9 remember the specific dates, but it would have been  
10 something like that. Between the time that we first met  
11 and that he came on board, that's what you're asking me,  
12 right?

13 Q. Yes.

14 A. Okay.

15 Q. All right. And in any event, it was several  
16 months that the recruitment efforts lasted?

17 A. Yes, it was.

18 Q. And what did AHF decide about whether or not it  
19 ultimately wanted to hire Jeff Carpenter?

20 A. We -- we really never wavered in our desire to  
21 hire him.

22 Q. And how soon in the process did AHF want Jeff  
23 Carpenter to start work with it?

24 A. Well, I would say almost immediately.

25 Q. And did Jeff Carpenter actually start working

1 for AHF that soon?

2 A. He didn't -- he didn't formally come on board,  
3 but he did consult with us, as I recall, in putting  
4 together some information for prospective lenders on the  
5 properties that we were trying to refinance.

6 Q. Do you -- do you recall that Jeff had to delay  
7 his full-time start date with y'all?

8 A. He did, yes.

9 Q. And what was your understanding of why Jeff  
10 Carpenter delayed his full-time start date?

11 A. He had -- I don't remember the amount, but he  
12 had a considerable amount of money he said that was  
13 coming to him from his current employer and he just was  
14 not in a position to leave yet.

15 Q. And was it your understanding that if Jeff left  
16 then that he would possibly lose out on getting that  
17 considerable amount of money?

18 A. That's my recollection.

19 MR. DONOHUE: Objection. Leading.

20 Q. (By Ms. Gibson) And the -- the considerable  
21 amount of money you mentioned, your understanding was  
22 that would be coming from who?

23 A. From his then current employer.

24 Q. Okay. Did you have any involvement in setting  
25 the AHF compensation package for Jeff Carpenter?

1           A.    No, I really didn't. As I recall, Steve  
2   Sterquell and Jeff handled that between themselves.

3           Q.    Okay. And Steve Sterquell, I think you  
4   mentioned, was the president?

5           A.    Correct.

6           Q.    And what ultimately happened to Steve Sterquell?

7           A.    He passed away in April of 2009.

8           Q.    And what happened to AHF eventually after Steve  
9   Sterquell died?

10          A.    I don't have a complete answer for that because  
11   I actually left the company about a month later.

12          Q.    Okay. With respect to the considerable amount  
13   of money you mentioned that was causing Jeff Carpenter to  
14   delay his start date with AHF, what else, if anything,  
15   did Jeff tell you about that?

16          A.    I really don't -- I really don't recall what the  
17   specifics were with -- I actually don't recall what the  
18   compensation drive from or -- we probably discussed it at  
19   one point in time. I just don't remember.

20          Q.    Okay. What type of work are you currently  
21   engaged in?

22          A.    I am now a residential real estate agent. Just  
23   within the last month. Just -- just started that career  
24   within the last month.

25          Q.    Okay. Do you currently have any business

1 dealings with Jeff Carpenter?

2 A. No.

3 Q. Do you currently have any future plans to do  
4 business with Jeff Carpenter?

5 A. No.

6 Q. Do you have any interest whatsoever in the  
7 outcome of this lawsuit?

8 A. No, except for Jeff has been a friend and -- but  
9 we really haven't talked much in the last few years.

10 CROSS-EXAMINATION

11 BY MR. DONOHUE:

12 Q. Mr. Richards, this is Mike Donohue. I represent  
13 the Postashniks you already mentioned --

14 A. Okay.

15 Q. -- as well as the defenders in this lawsuit that  
16 Mr. Carpenter has filed against them.

17 You say that you are -- you're a friend of  
18 Jeff Carpenter?

19 A. Well, I would count myself as one, although  
20 we've -- we've talked very little in the last few years.

21 Q. Okay. And why would you count yourself as a  
22 friend of Mr. Carpenter?

23 A. Because at one time we were fairly close in  
24 terms of business associates and we just -- we got along  
25 well.

1 Q. Okay. And what time frame was this that you  
2 were very close with Mr. Carpenter?

3 A. Oh, as I said, we both left AHF in 2009. We --  
4 you know, we talked periodically after that, and then it  
5 just seems like the times we talked got, you know, fewer  
6 and farther between to where we --

7 Q. Okay.

8 A. -- we'd go like maybe a year without talking.

9 Q. Okay. And as I understand, you left about a  
10 month after Mr. Sterquell passed away?

11 A. Yeah, something like that.

12 Q. And Mr. Carpenter left also about the same time  
13 as you; is that right?

14 A. Correct.

15 Q. All right. And then where did Mr. Carpenter go  
16 after he left, after he left American Housing Foundation?

17 A. I -- I don't recall specifically.

18 Q. All right. And when you worked with him, is  
19 that the time frame that you said that you were fairly  
20 close with him?

21 A. Yes.

22 Q. So that was back in, what, 2007 through 2009  
23 time frame?

24 A. Correct.

25 Q. All right. Have you kept up with him much since



1 then?

2 A. As I said earlier, we -- we probably did a  
3 better job of keeping up with each other early on after  
4 our tenure at AHF, but really the last few years we've  
5 had very little conversation amongst each other.

6 Q. So after you left and Mr. Carpenter left,  
7 American Housing Foundation continued; is that right?

8 A. I believe that's correct, yeah.

9 REDIRECT EXAMINATION

10 BY MS. GIBSON:

11 Q. Mr. Richards, why did American Housing  
12 Foundation want to hire Jeff Carpenter?

13 A. We needed somebody that -- that people would  
14 consider to be a fairly high profile professional  
15 property management guy or girl. It was -- it was  
16 important to us in how we were kind of projecting or  
17 branding ourselves in terms of refinancing the -- the  
18 portfolio debt that we had. And he came highly  
19 recommended to us, so...

20 Q. And -- and when you say you needed someone that  
21 people would consider high profile experience, what --  
22 what types of people are you talking about?

23 A. Well, as I said, I believe that he was first  
24 recommended by our -- one of our insurance agents in  
25 Denver. These guys, as I recall, did a lot of this type

1 of business, insuring, you know, large portfolios of --  
2 of multifamily properties. They knew of -- I can't  
3 remember where they knew of him from, but they felt like  
4 he would fit that bill.

5 Q. Did it matter to lenders that y'all had someone  
6 experienced in property management?

7 A. Well, it did in this particular case.

8 THE COURT: That's it? Any other portions  
9 you want to read from that? Was that everything?

10 MS. GIBSON: No, that's it.

11 THE COURT: That concludes the that witness,  
12 ladies and gentlemen. We'll continue with  
13 Mr. Potashnik's testimony now.

14 Mr. Potashnik, if you could come back up  
15 here. Just have a seat there (pointing).

16 Ms. Gibson, if you'll pick up where you left  
17 off.

18 MS. GIBSON: Okay.

19 BRIAN POTASHNIK,  
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. GIBSON:

23 Q. Mr. Potashnik, do you see a document marked  
24 Exhibit 20 in front of you?

25 A. Yes.

1 Q. And does Exhibit 20 appear to be an accurate  
2 copy of the Fifth Amendment to escrow agreement in  
3 connection with the asset sales of Cascade?

4 A. It doesn't look familiar to me. I mean,  
5 probably looked at it some -- at some point maybe, I  
6 don't know. This was signed ten years ago. I --

7 Q. Do you --

8 A. I'm sorry. But it's just something that I can't  
9 absolutely say that I'm familiar with because it was from  
10 November of 2007, so I apologize. And it is an amendment  
11 to an escrow agreement that I think I would need to see  
12 before being affirmative as to whether or not this is a  
13 proper and correct amendment to that agreement.

14 Q. You see that the second page says -- has a  
15 signature for each seller identified in the contract?

16 A. Yes, ma'am.

17 Q. And it says by Brian Potashnik as authorized  
18 agent?

19 A. Yes.

20 Q. And do you recognize your signature on the  
21 second page?

22 A. Yes, I do.

23 Q. Okay. You realize that during this litigation,  
24 we asked for your copy of the same documents, correct?

25 A. I'm not aware.

1 Q. You weren't?

2 A. No.

3 Q. Did you go look for your copy of the -- these  
4 documents?

5 A. No.

6 MS. GIBSON: Plaintiff offers Exhibit 20.

7 THE COURT: Any objection?

8 MR. FRIEDMAN: No, sir.

9 THE COURT: Okay. 20 is admitted.

10 (Plaintiff's Exhibit No. 20 is admitted.)

11 (Sotto voce discussion.)

12 MS. GIBSON: Your Honor -- Your Honor, that  
13 happened right when we changed tactics and that one got  
14 missed, so...

15 THE COURT: All right. Very good.

16 Q. (By Ms. Gibson) Mr. Potashnik, I'm handing you  
17 what's been marked Plaintiff's Exhibit 25. If you'll  
18 look through those.

19 A. (Witness complies.)

20 Q. Do those appear to be accurate copies of  
21 organizational charts for various portions of the  
22 organization?

23 A. I don't know where these originated. I have --  
24 I've never seen those before. So it would take me some  
25 time and some ability to verify everything in order to

1 tell you affirmatively that this is -- these are  
2 absolute.

3 Q. Do you recognize all the people on those  
4 organizational charts?

5 A. I have to read through it to tell you. I  
6 recognize everybody on the front -- on the first page.  
7 Second page, yes. I recognize everybody there.

8 Q. Well, do you mind before you read the whole  
9 thing, looking at the front page.

10 A. (Witness complies.)

11 Q. Does that hierarchy and salary and bonus  
12 information appear to be accurate to you?

13 A. I don't know.

14 Q. I'm just going to grab this back, if that's  
15 okay. Thanks.

16 A. Sure.

17 Q. Mr. Potashnik, yesterday I had asked you some  
18 questions about whether you ever had Jeff Carpenter lead  
19 tours with potential purchasers.

20 And I believe your answer was no; do you  
21 recall that?

22 A. Yes, ma'am.

23 Q. Okay. And you said that never happened?

24 A. I think to clarify my understanding of the  
25 question or my interpretation of the question, potential

1 purchasers are those that are the decision makers, who  
2 write the checks. Now, obviously there are people at  
3 lower levels that do due diligence, property inspections,  
4 things of that nature. So not everybody -- if you're  
5 including them -- would have necessarily been somebody  
6 that I would have taken to the property. But investors,  
7 purchasers, that would have been something that I would  
8 have done or delegated to Mark Jones to do.

9 Q. To who -- you would delegate tours to Mark  
10 Jones?

11 A. Yes.

12 Q. Did you have -- ever have Jeff Carpenter handle  
13 meetings with potential purchasers and investors on his  
14 own?

15 A. On his own, no.

16 Q. I'm handing you Plaintiff's Exhibit 35. I  
17 realize the writing is small, but that is as big as they  
18 could get it to print.

19 Do you recognize Exhibit 35 --

20 MS. GIBSON: I'm sorry, Mr. Friedman.

21 Q. (By Ms. Gibson) -- as an e-mail from you to Jeff  
22 Carpenter?

23 A. Yes.

24 Q. Okay. And -- and does this appear to be an  
25 accurate copy of an e-mail that you sent to Jeff

1 Carpenter on June 26th, 2006?

2 A. Yes.

3 Q. Okay.

4 MS. GIBSON: Plaintiff offers Exhibit 35.

5 THE COURT: Any objection?

6 MR. FRIEDMAN: No, sir.

7 THE COURT: 35 is admitted.

8 (Plaintiff's Exhibit No. 35 is admitted.)

9 Q. (By Ms. Gibson) You see you're asking Jeff  
10 Carpenter to handle a meeting in San Antonio?

11 A. Yes, ma'am.

12 Q. Okay. And you provide some -- you've been  
13 provide -- you forward to him some information about  
14 Greystone and Company?

15 A. No. I forwarded him an e-mail that was sent to  
16 me by the investment bankers, regarding a meeting with  
17 Greystone.

18 Q. Okay. Who --

19 A. So it was not -- that is not my e-mail to Jeff.  
20 My e-mail to Jeff was me asking him that he had -- if he  
21 would handle the meeting?

22 Q. Correct.

23 And it just -- this information is  
24 information that he then providing to you that you're  
25 forwarding on?

1 A. That's correct.

2 Q. Okay. And who was Greystone and Company?

3 A. Well, as far as I was concerned, they were not a  
4 potential investor or purchaser. I knew of Greystone as  
5 being a property management company and it was my opinion  
6 that this was not an investor, purchaser that was a  
7 potential candidate for the company and therefore didn't  
8 feel that it was necessary for myself to be the one to  
9 take them to properties.

10 Q. So -- so help me understand, who --

11 THE WITNESS: Bless you.

12 MR. FRIEDMAN: Bless you.

13 Q. (By Ms. Gibson) What role did you consider  
14 Greystone and Company to have?

15 A. I didn't think that Greystone would be a  
16 candidate that I would consider to be a purchaser or  
17 investor.

18 Q. Okay. Well, was the meeting about potential  
19 purchase?

20 A. I don't recall what the meeting was about. It  
21 could have been about property management. It could have  
22 been about the potential purchase of one property. It  
23 could have been about potential purchase of all  
24 property -- purchasing all properties. I -- I just don't  
25 recall, but I did not -- and can tell you that,



1 Greystone -- in my opinion, I would not consider then,  
2 nor do I consider now, to be a candidate worthy of being  
3 qualified to purchase anything from our portfolio.

4 Q. Okay. Well, you see the biography that was  
5 forwarded about one of the attendees, Bill Guessford?

6 A. Yes.

7 Q. Okay. And you see that he participates in the  
8 analysis and purchase of new assets?

9 A. Yes. I also see before highlighting that he is  
10 the managing director of their acquisitions and REO  
11 division. And I didn't consider them to be a worthy  
12 candidate that I would qualify as an investor or  
13 purchaser.

14 Q. And you see --

15 MR. FRIEDMAN: I'm try to be patient and  
16 respectful, but all of this is irrelevant to the claims  
17 that have been plead.

18 THE COURT: All right.

19 MS. GIBSON: Your Honor, it goes to that at  
20 the time, Brian Potashnik thought that Jeff was important  
21 to the asset sale.

22 THE COURT: Overruled.

23 Q. (By Ms. Gibson) And who -- so you see there's  
24 also another person listed who would be there. Kelley  
25 Heinsman, you see that?

1           A.    I don't know whether or not she was attending  
2   that meeting or not.

3           Q.    Okay.  Well, she --

4           A.    I think that she was the one that sent the  
5   e-mail, so that is why she --

6           Q.    Okay.

7           A.    -- put her name and -- the name of her company.  
8   But I'm not aware that she attended that.  And, again, I  
9   did not consider this to be a purchaser or investor of  
10  any serious nature that would deserve any kind of  
11  attention at my level or an executive level.

12          Q.    Okay.  So is it your testimony now that you did  
13  ask Jeff Carpenter to handle meetings with potential  
14  purchasers and investors if you didn't think they were  
15  worthy?

16          A.    No.  I, again, don't know whether or not they  
17  would qualify as being a purchaser or investor.  They may  
18  have been a potential candidate to manage the portfolio.  
19  Greystone is a management company.  So it could have been  
20  a meeting relating them to taking over purely the  
21  function of management or maybe management of one or two  
22  assets in the portfolio.

23          Q.    Well, you see this company, RBC Capital Markets?

24          A.    Yes.

25          Q.    That company was retained by your organization

1 to help with the potential asset sale, correct?

2 A. Yes. That's correct.

3 Q. All right. So does that help refresh your  
4 memory that this was a potential purchaser?

5 A. No. As a matter of fact, their role could have  
6 been -- in many cases it was -- to make sure that the  
7 company had a functioning third-party management company  
8 potentially as a way to attract potential purchasers and  
9 investors.

10 Q. So --

11 A. So it could have been a recommendation on their  
12 part to bring the company up in its standards because we  
13 were, again, losing money at the management company level  
14 and to bring in a company like Greystone to become a more  
15 attractive candidate to a potential purchaser and  
16 investor is the recommendation of the investment bank.

17 Q. RBC Capital Markets was -- one of the things  
18 that it did was to help find potential purchasers in  
19 connection with the asset sale, correct?

20 A. Among many things, yes. Among many things,  
21 financing, management functions.

22 Q. Mr. Potashnik, you -- you were the agent for all  
23 of the sellers in the asset sale, correct?

24 A. If -- again, I don't know whether or not I was  
25 the agent of all the entities. Again, this was ten years

1     ago.    So, please, you know, I need to have my memory  
2     refreshed if that's the case.   And if that's what you're  
3     saying, than it certainly could be the case.

4           Q.   Well -- well, for example, we just talked about  
5     the Fifth Amendment to the escrow agreement.   And you see  
6     on the second page it says that you're signing for each  
7     seller identified in the contract by Brian Potashnik as  
8     authorized agent.

9                     Does that refresh your memory that you were  
10    acting as authorized agent for the sellers?

11           A.   To simplify and answer your question, I was  
12    ultimately the person who controlled the company and was  
13    where the buck stop as you should probably put it.   I  
14    mean, I don't doubt that I was the authorized agent for  
15    all of the entities.   And if -- in some cases it might  
16    have been Cheryl or somebody else, then I certainly don't  
17    think that I was not ultimately the one that would be  
18    responsible as the agent.

19           Q.   Okay.   So you -- you acknowledge that you were  
20    the authorized agent for all of the sellers?

21           A.   As far as I know, that's the case, yes.

22           Q.   All right.   And do you recall Jeff Carpenter  
23    trying to negotiate a higher percentage of sale proceeds  
24    than 3 percent?

25           A.   No.

1 Q. You recall him asking if -- if it could be 5  
2 percent, instead of 3 percent?

3 A. No.

4 Q. Do you recall telling Jeff that that wasn't  
5 going to happen because Cheryl had already -- Cheryl  
6 Potashnik has already blessed the 3 percent deal and so  
7 you were going to stick with that?

8 A. No, there -- there was no deal. No conversation  
9 like that --

10 Q. That you had --

11 A. -- that wouldn't have occurred under any  
12 circumstances, Ms. Gibson.

13 Q. Okay. I understand you've already testified  
14 under oath that you never had any conversations with any  
15 employees about any type of money to get them to stay,  
16 correct?

17 A. I am answering the question that you asked of  
18 me. You are the one who is making the statement.

19 Q. Mr. Potashnik, you were -- you were the owner --  
20 the ultimate owner of all three entities: Affordable  
21 Housing Construction, Southwest Housing Development and  
22 Southwest Housing Management?

23 A. As far as I know.

24 Q. Okay. During --

25 A. It might have been some other legal structure,

1 but ultimately I was the owner.

2 Q. Okay.

3 A. And being married to Ms. Geiser, I obviously  
4 felt that she was as much of an owner as I was.

5 Q. Sure. Sure.

6 And given that you were married to her,  
7 y'all shared control over the organizations?

8 A. I think we both had certain responsibilities  
9 that differed in many ways, but ultimately we -- when it  
10 came to decisions that impacted the company in any way,  
11 we would get together and make decisions.

12 Q. And, Mr. Potashnik, you were a director of each  
13 of the entities: Affordable Housing Construction,  
14 Southwest Housing Development, Southwest Housing  
15 Management?

16 A. Yes, ma'am.

17 Q. And Cheryl Potashnik was also considered to be  
18 an officer as well?

19 A. I don't know. I'm not sure whether anybody  
20 other than myself was an officer or director of any of  
21 the entities. So I would have to look at the corporate  
22 books and records, which I haven't done in ten years. So  
23 pardon me for not knowing.

24 Q. Okay. You -- you understand that your attorneys  
25 produced some corporate records in this case?

1 A. I don't know what my attorneys produced.

2 Q. Okay. You haven't -- so you haven't reviewed  
3 any corporate --

4 A. No, ma'am.

5 Q. -- record?

6 Okay. Do you recall testifying that you had  
7 a very strict -- very strict policies and procedures,  
8 whereby if any agreements with any employees or with any  
9 venders or any contractors take place, they are written  
10 and vetted by legal counsel and duly executed?

11 A. I'm sorry. What was the question?

12 Q. Sure. Let me just ask it straight up.

13 It's your position that we, meaning the  
14 organization, you and Cheryl, have very strict policies  
15 and procedures, whereby any agreements with any employees  
16 or with any venders or with any contractors take place,  
17 they are written and vetted by legal counsel and duly  
18 executed?

19 A. I think that the statement you made is missing  
20 one word and that word is should be. Obviously running  
21 an organization and having the number of properties and  
22 employees that we did, at some of the levels within the  
23 organization, there may not have been adherent to the  
24 policy that we had hoped to have. So I can tell you that  
25 that was our best efforts.

1 Q. Okay. You recall being at your deposition?

2 A. (No response.)

3 Q. Yes?

4 A. Yes, of course.

5 MS. GIBSON: Page 41.

6 MR. FRIEDMAN: What line?

7 MS. GIBSON: 16.

8 Q. (By Ms. Gibson) I'm trying to -- I accidentally  
9 wrote on this.

10 You say in response to a question about --  
11 so if any employee says otherwise, that employee is  
12 lying. And you say, Unless it is within their employment  
13 agreement with the company, then it is not an agreement.  
14 We have very strict policies and procedures, whereby if  
15 any agreements with any employees or with any venders or  
16 with any contractors take place, they are written and  
17 vetted by legal counsel and duly executed.

18 Correct?

19 A. Correct. That's industry standard. So I think  
20 in business, in general, that's very standard.

21 Q. Mr. Potashnik --

22 A. Yes, Ms. Gibson.

23 Q. -- this very strict policy about having things  
24 in writing, fully vetted by attorneys and duly  
25 executed --



1 A. Yes.

2 Q. -- that policy is not in writing anywhere, is  
3 it?

4 A. I don't know if it is or not, it could be. I'm  
5 not -- I don't know whether it's in writing or not. I  
6 think it's obviously something that is best business  
7 practices in the real estate industry and in any business  
8 as I said.

9 Q. Okay. You think the strict policy about having  
10 things in writing is oral?

11 MR. FRIEDMAN: I'm not -- that question  
12 wasn't clear to me. I'm going to object to --

13 Q. (By Ms. Gibson) Do you understand?

14 A. No.

15 Q. Okay. Your very strict policy about having  
16 things in writing was not in writing, correct? If it --

17 A. I'm sorry. I don't know, I just --

18 MR. FRIEDMAN: Excuse me --

19 THE WITNESS: -- answered that question.

20 MR. FRIEDMAN: -- excuse me. Asked and  
21 answered.

22 THE COURT: You just said you didn't  
23 understand the last question, she --

24 MR. FRIEDMAN: The last question was  
25 unintelligible. This question was --

1 THE COURT: You're objection is overruled.

2 MS. GIBSON: Mr. Friedman.

3 MR. FRIEDMAN: Thank you.

4 Q. (By Ms. Gibson) Mr. Potashnik, I'm handing you  
5 what's been marked Plaintiff's Exhibit 40.

6 Do you recognized Exhibit 40 as the employee  
7 handbook for Southwest Housing? It actually says  
8 associate handbook?

9 A. Yes.

10 Q. Okay.

11 MR. DONOHUE: Clarification purposes,  
12 Ms. Gibson, you handed us two exhibits, I believe. Which  
13 is 40?

14 MS. GIBSON: Did I hand you -- okay.

15 MR. DONOHUE: You handed us two of the same.

16 MS. GIBSON: I think two of the same.

17 Sorry.

18 Q. (By Ms. Gibson) Mr. Potashnik, can you point me  
19 to anywhere in the employee handbook that says  
20 compensation agreements have to be put in writing, duly  
21 executed and fully vetted by counsel?

22 A. I would have to read it and I -- as I said --

23 Q. How about if you --

24 A. This is something that was published probably  
25 in 2000, revised in 2007 and that's over ten years ago.

1 And I'm not trying to be difficult, but I would have to  
2 go through it to see. But I don't think that something  
3 like that would be appropriate to put in an employee's  
4 handbook. This is simply something that lays out the  
5 basic employment issues for people that work in the  
6 company that they should adhere to.

7 MS. GIBSON: Plaintiff offers Exhibit 40.

8 THE COURT: Any objection?

9 MR. FRIEDMAN: No objection, Your Honor.

10 THE COURT: 40 is admitted.

11 (Plaintiff's Exhibit No. 40 is admitted.)

12 Q. (By Ms. Gibson) Mr. Postashnik, do you recall  
13 at the end of Mr. Carpenter's employment that you gave  
14 him permission to take his lap -- to keep his laptop, to  
15 take it with him?

16 A. No. He was never given permission to take  
17 company property.

18 Q. Okay. And in connection with this case, you  
19 have accused Mr. Carpenter of stealing the laptop,  
20 correct?

21 A. I don't think that I personally did anything  
22 other than to report and request that the computer, which  
23 was company property that Mr. Carpenter willfully took on  
24 his own, be returned as it should have been.

25 Q. Is it your contention that he stole it?

1           A.    I don't want to classify Mr. Carpenter as a  
2 thief, but steals -- if that's your interpretation of  
3 taking something that doesn't belong to you and not  
4 returning it, then I guess I would agree with you.

5           Q.    Do you recall that before Jeff Carpenter  
6 actually left, that Southwest Housing made a back-up copy  
7 of what was on his laptop?

8           A.    No, I'm not aware of that.

9           Q.    If that happened, that's not consistent with  
10 stealing a laptop, is it?

11          A.    I'm not aware of that. But I think if you  
12 physically take something that doesn't belong to you and  
13 not return it, I would have to agree with you,  
14 Ms. Gibson, that that would be stealing.

15          Q.    You asked Jeff Carpenter -- you told him he  
16 could go ahead and keep it because --

17          A.    No, I didn't say that.

18          Q.    In -- in fact -- please, let me finish my  
19 question.

20          A.    Yes.

21          Q.    The reason you gave Mr. Carpenter, for allowing  
22 him to keep the laptop, is you might still need him to do  
23 some additional things and you might still need his  
24 assistance in connection with the criminal investigation?

25          A.    No, that's not correct. I was never -- I never

1 gave Mr. Carpenter permission to take company property.  
2 I was not requiring, nor asking or in need of  
3 Mr. Carpenter's assistance in any way to help with  
4 anything relating to any matters, business, personal,  
5 professional, criminal, whatever they may be.

6 Q. Absolutely never happened, right?

7 A. Absolutely never happened.

8 Q. And Mr. Carpenter's last day at Southwest  
9 Housing was when?

10 A. I don't recall.

11 Q. Okay. He wasn't there after November 2nd,  
12 correct, of 2007?

13 A. I'm not aware of the specific date that he left  
14 the company.

15 Q. Well, let's take a look at your own attorney's  
16 chart.

17 You see that they say 11/02 is the last day  
18 of employment?

19 A. The charts are confusing because I think -- you  
20 had a chart in your own opening statement that dates on  
21 it too, but -- can I see that?

22 Q. Well, two of the dates were incorrect and we  
23 corrected that.

24 A. Oh, I'm sorry. So the dates that you had on  
25 your opening statement were not correct?

1 Q. No. They were correct as far as his last day?

2 A. Oh, okay.

3 Q. But, Mr. Potashnik, this isn't -- this isn't  
4 your closing argument.

5 A. No, I'm not making closing, I'm just getting  
6 confused by your questioning because I'm getting  
7 different dates. So I apologize.

8 Q. I asked -- no one disputes that the last day  
9 Jeff Carpenter was needed was October 31st, 2007, since  
10 you're asking. Because the management transition  
11 agreement was -- became effective right here,  
12 November 1st, management was transferred to the  
13 purchaser --

14 A. Are you asking a question?

15 Q. But Mr. -- you asked me -- you said you were  
16 confused and --

17 A. Well, you're making a misstatement that's why  
18 I --

19 Q. -- and wanted clarification --

20 MR. FRIEDMAN: Judge, I'm going to object to  
21 the dialogue --

22 MS. GIBSON: So --

23 MR. FRIEDMAN: -- and ask to go back to  
24 question and answer.

25 THE COURT: Mr. Potashnik, let her you ask

1 the questions.

2 THE WITNESS: Okay. Please, I --

3 THE COURT: And if you can answer them,  
4 answer them. If you can't, say you can't.

5 THE WITNESS: I --

6 MR. FRIEDMAN: I'm going to object to  
7 counsel being argumentative with the witness.

8 THE COURT: Overruled.

9 MR. FRIEDMAN: Thank you.

10 Q. (By Ms. Gibson) Mr. Potashnik, I'm handing you  
11 Plaintiff's Exhibit 41.

12 Do you see on the first page of Exhibit 41  
13 that there appears to be an e-mail from Devona Gray to  
14 Jeff Carpenter?

15 A. Yes.

16 Q. Okay. And Devona Gray, at the time, is listed  
17 as human resources manager for Southwest Housing?

18 A. Yes.

19 Q. Okay. Do you have any reason to doubt that that  
20 is an accurate copy of an e-mail from Southwest Housing's  
21 human resources manager to Jeff Carpenter?

22 A. No, I have no reason to doubt that.

23 Q. Okay. And if you turn to the next page.

24 A. (Witness complies.)

25 Q. You see that there's an e-mail from Jeff

1 Carpenter to you?

2 A. Excuse me. I'm just finishing reading the first  
3 page of the exhibit to refresh my memory. Yes.

4 Q. Okay. And is that an accurate copy -- does that  
5 appear to be an accurate copy of an e-mail to you?

6 A. I don't -- I don't recall if it was or not. I  
7 don't know what the context of management section 42  
8 agreement that it refers to in here.

9 Q. Well, do you -- do you have any reason to doubt  
10 that this e-mail -- that this is an accurate copy of an  
11 e-mail to you?

12 A. No. I have no reason to doubt that it's an  
13 e-mail to me.

14 Q. Okay. And --

15 A. I'm just trying to understand what the context  
16 of the e-mail is. That's all.

17 Q. And same -- same with the e-mail on the next  
18 page, bates labeled Carpenter 953?

19 A. Yes, ma'am.

20 Q. Same with the next two e-mails to you, labeled  
21 Carpenter 962 and 964?

22 A. 960 -- yes.

23 Q. Okay.

24 MS. GIBSON: Plaintiff's offers Exhibit 41.

25 THE COURT: Any objection?



1 MR. FRIEDMAN: No objection, Your Honor.

2 THE COURT: 41 is admitted.

3 (Plaintiff's Exhibit No. 41 is admitted.)

4 Q. (By Ms. Gibson) You see, Mr. Potashnik, that on  
5 the first e-mail, Southwest Housing is still e-mailing  
6 Jeff Carpenter on November 5th, 2007, about 401(k)  
7 issues?

8 A. Yes.

9 Q. And so after Jeff Carpenter left -- as of  
10 November 5th, Jeff Carpenter was not shut out from the  
11 company's e-mail system, correct?

12 A. I don't know. I mean, if he somehow was able to  
13 maintain some kind of communication with the stolen  
14 laptop, then I think that's probably why.

15 Q. And you see on the next document, this is on  
16 November 5th, after he's gone, while you contend he's  
17 stolen the laptop, he's e-mailing you information about  
18 the business, correct?

19 A. Well, I think that characterized his actions as  
20 stealing, at which point I agree.

21 Q. No --

22 A. If he somehow was able to still access into our  
23 e-mail system, then he may very well have been a party to  
24 these e-mails. I just don't know, Ms. Gibson.

25 Q. Jeff Carpenter is attaching a master section 42

1 management agreement, right?

2 A. Yes. I'm sure that's something that we would  
3 have liked to have had on our laptop that was -- should  
4 have been kept at the company, instead of being taken  
5 from the company. So...

6 Q. And you see that this surrounds Vegas, that's  
7 the context?

8 A. Yes. I also see a date of October 29th on the  
9 original message.

10 Q. Sure.

11 That's Jeff's -- the earlier message,  
12 Mr. Potashnik, right?

13 A. Oh.

14 Q. It's an e-mail string --

15 A. Okay.

16 Q. But Jeff Carpenter is sending you an attachment  
17 on November 5, 2007.

18 A. Or maybe it wouldn't have been necessary to have  
19 that had we had the laptop that was our property.

20 Q. You-all had some properties in Las Vegas?

21 A. We had a property.

22 Q. A property in Las Vegas?

23 A. Yes.

24 Q. Did you ever say, Jeff Carpenter, what are you  
25 doing sending me business documents? You're not supposed

1 to have those?

2 A. I don't recall having any communication with  
3 Mr. Carpenter.

4 Q. The truth is you asked Jeff Carpenter to  
5 continue to help you on matters after he left?

6 A. No, that is absolutely false.

7 Q. Using the laptop that had the documents he  
8 needed on it?

9 A. I had no communication nor did I ask or need to  
10 have communication after he walked away from his job and  
11 stole the company's computer, Ms. Gibson.

12 Q. If you'll turn to the next page.

13 A. (Witness complies.)

14 MR. FRIEDMAN: Are we still on 41?

15 MS. GIBSON: Yes.

16 Q. (By Ms. Gibson) This is another e-mail from  
17 Jeff Carpenter to you concerning the organization's  
18 business, correct?

19 A. Yes.

20 Q. Rosemont Casa Del Norte was one of the  
21 organization's properties?

22 A. That's correct.

23 Q. And so Jeff is saying here are the agreements  
24 that I sent to you previously, he's saying we can exclude  
25 Nevada Hand, Cascade Affordable and any Pinnacle related

1 enteritis. I have a call into Spencer. And it goes on.  
2 He's continuing to work with you even after  
3 he left on business matters, correct?

4 A. I see one-way e-mail communications and no  
5 e-mail strings do I see where I made any response to  
6 Mr. Carpenter on anything that you're referring to in  
7 this exhibit, Ms. Gibson, or anything else for that  
8 matter.

9 Q. Did you -- did you ever --

10 A. So I don't -- I mean, I really think that if you  
11 are asking me a question whether we had engaged in some  
12 kind of a relationship, whereby I had asked him to  
13 perform certain functions or responsibilities after he  
14 was terminated and stole the company's computer, I would  
15 say that categorically that never happened.

16 Q. Did you say -- did you ever say to Jeff after he  
17 left, good grief, Jeff, why are you sending me company  
18 documents and talking about business, you're not supposed  
19 to have those?

20 A. No. Why would I?

21 Q. You -- you wouldn't, Mr. Potashnik --

22 A. Exactly. That's what I'm saying, I was told  
23 by --

24 Q. -- because he didn't steal the laptop --

25 A. -- I was told by my attorneys --

1 Q. -- isn't that right?

2 THE COURT: Wait --

3 THE WITNESS: No, I -- okay.

4 THE COURT: -- wait till she asks her  
5 question and then you can answer.

6 THE WITNESS: What's the question?

7 THE COURT: Whether your --

8 Q. (By Ms. Gibson) You wouldn't, Mr. Potashnik,  
9 because the truth is you gave Jeff Carpenter permission  
10 to take that laptop?

11 A. Ms. Gibson, the truth is -- is that by that time  
12 we had informed our attorneys of the computer theft and  
13 the termination and we were advised by legal counsel --

14 MR. FRIEDMAN: All right. I'm not going to  
15 let him get into what he was advised by legal counsel.

16 THE COURT: Okay.

17 MR. FRIEDMAN: So I'm going to cut him off  
18 right there. Thank you.

19 THE WITNESS: Okay. We had no further  
20 communication at that point, regarding any company  
21 responsibilities as far as I know. I certainly don't  
22 recall.

23 Q. (By Ms. Gibson) So you see at the last page of  
24 this exhibit, here's another e-mail from Jeff Carpenter  
25 on Friday, November 9th, to you about Vegas property,

1 correct?

2 A. Yes.

3 Q. Okay. And, again, he's talking about having  
4 spoken a couple of times in the last few days with  
5 Spencer at M and M; is that true?

6 A. Any e-mails sent from Jeff Carpenter after he  
7 was terminated and stole our company computer, I did not  
8 even bother reading. Trust me, that was not something  
9 that was even worthy of my attention, Ms. Gibson. That's  
10 why you don't see any response from me on anything that  
11 you're throwing at me that he communicated to me about.

12 Q. He was continuing -- this discussion is about  
13 the organization's business, correct? Your  
14 organization's business?

15 A. It was a one-way discussion, Ms. Gibson.

16 Q. You think that Jeff was just randomly trying to  
17 help you for no reason?

18 A. You see my response anywhere? I -- I don't  
19 believe that this was anything that deserved or warranted  
20 my attention after this situation that took place upon  
21 his termination of stealing the company's property.

22 Q. Is it accurate to say that you never accused  
23 Jeff Carpenter of stealing a laptop until in the middle  
24 of this lawsuit?

25 A. No.

1 Q. No.

2 When did you?

3 A. No. I think when we realized that company  
4 property was not being returned to us, that we drew the  
5 conclusion that it was obviously stolen --

6 Q. The truth --

7 A. -- and at best, taken without any authorization  
8 from us that he could have that property. That was --  
9 there was never any -- any authorization, at any level,  
10 from anybody, that he could walk off with the company  
11 computer, Ms. Gibson.

12 Q. Did you -- so do you have some written document  
13 from before this lawsuit was filed asking Jeff to return  
14 that computer to you?

15 A. Do -- do I personally. I'm not aware that I did  
16 that, but there may be.

17 Q. Well --

18 A. There may be.

19 Q. And if there is, would it be on the hard  
20 drive --

21 A. I don't know.

22 Q. That Mrs. Potashnik -- or that Ms. Geiser got  
23 rid of?

24 A. I don't know.

25 Q. The truth is, Mr. Postashnik, ever since this

1 lawsuit was filed, you-all have done your level best to  
2 make unfounded allegations against Mr. Carpenter, true?

3 A. No, that isn't correct, Ms. Gibson. There is  
4 nothing that we are alleging that is untrue.

5 Q. Mr. Potashnik, while this lawsuit was pending,  
6 you dissolved Southwest Housing Development Company,  
7 correct?

8 A. I don't know.

9 Q. Hand you Plaintiff's Exhibit 39.

10 Does Exhibit 39 appear to be an accurate  
11 copy of records terminating the existence of Southwest  
12 Housing Development?

13 A. Yes.

14 MR. DONOHUE: Do we already have a copy,  
15 Ms. Gibson?

16 MS. GIBSON: Yes. Yes, I gave them to you  
17 ahead of time.

18 THE WITNESS: Oh, I'm sorry. So what was  
19 the question, Ms. Gibson?

20 Q. (By Ms. Gibson) The question was: Does  
21 Exhibit 39 appear to be an accurate copy of secretary of  
22 state's documents terminating the existence of the  
23 company --

24 A. Yes, ma'am.

25 Q. -- Southwest Housing Development?



1 A. Yes, ma'am.

2 Q. Okay. Did you know at the time -- oh, I'm  
3 sorry.

4 MS. GIBSON: I offer Plaintiff's Exhibit 39.

5 THE COURT: Any objection?

6 MR. FRIEDMAN: No objection.

7 THE COURT: 39 is admitted.

8 (Plaintiff's Exhibit No. 39 is admitted.)

9 Q. (By Ms. Gibson) When -- were you aware that  
10 Texas law requires that companies who are dissolving,  
11 give notice to people -- have claims against the company,  
12 like Mr. Carpenter?

13 A. I was not aware.

14 Q. Did you give Mr. Carpenter any notice that you  
15 were going to dissolve the company during this lawsuit?

16 A. I don't know.

17 Q. You don't know one way or the other?

18 A. I don't know one way or the other.

19 Q. And I'm handing you Plaintiff's Exhibit 40.

20 THE COURT: 40 is already in.

21 MS. GIBSON: 40 is in?

22 THE COURT: Yeah.

23 MS. GIBSON: I must have marked it wrong.

24 THE COURT: 40, I think, was a employee  
25 handbook.

1 THE WITNESS: So it's -- was I looking at  
2 the wrong document?

3 MS. GIBSON: I'll call this 40(a).

4 THE WITNESS: What's this one then?

5 Q. (By Ms. Gibson) What do you mean, what's this  
6 one?

7 A. Well, didn't you say you had the wrong date --

8 THE COURT: She was talking about the  
9 document --

10 THE WITNESS: Oh, okay. I just want to make  
11 sure that we're on the same page.

12 MS. GIBSON: No, I just -- the judge was  
13 just pointing out that I don't always count very well.

14 MR. DONOHUE: What page is that we have?

15 MS. GIBSON: So Exhibit 1 --

16 MR. DONOHUE: Do we have that?

17 MS. GIBSON: Yes, I gave you all --

18 MR. FRIEDMAN: Nothing is numbered, so we  
19 have no way of correlating.

20 THE WITNESS: I -- I'm sorry because I'm  
21 getting confused. What --

22 MR. FRIEDMAN: May I approach, Your Honor,  
23 to see what he's looking at?

24 THE COURT: Just tell me which one is 40(a)  
25 that you showed me?

1 MS. GIBSON: That's the certificate of  
2 termination for Southwest Housing Management. It says  
3 the staffing --

4 MR. DONOHUE: Okay. Got it.

5 MS. GIBSON: You see it?

6 Q. (By Ms. Gibson) Okay. Does exhibit --  
7 Mr. Potashnik, does Exhibit 40(a) appear to be an  
8 accurate copy of secretary of state records, terminating  
9 the existence of Southwest Housing Management?

10 A. Yes, ma'am.

11 Q. Okay.

12 MS. GIBSON: And plaintiff offers  
13 Exhibit 40(a).

14 THE COURT: All right. Any objection?

15 MR. FRIEDMAN: No, sir.

16 THE COURT: 40(a) is admitted.

17 (Plaintiff's Exhibit No. 40(a) is admitted.)

18 Q. (By Ms. Gibson) And Southwest Housing  
19 Management was dissolved and terminated during the  
20 pendency of this lawsuit, correct?

21 A. I don't know.

22 Q. Did you give Jeff Carpenter, who had claims  
23 against that entity at the time, notice that you were  
24 dissolving the company and terminating this existence?

25 A. Did -- did I personally?

1 Q. Did you -- do you know of anyone who did?

2 A. I don't know. I didn't, but it may have been  
3 done by my attorneys or by, you know, other people within  
4 the company at the time.

5 Q. Do you recall discussing annual bonuses with  
6 Jeff Carpenter?

7 A. No.

8 Q. Do you deny ever discussed annual bonuses with  
9 Jeff Carpenter?

10 A. I don't deny it because at some point there was  
11 discussions as it related to his employment agreement,  
12 which clearly lays out the bonuses that we agreed upon,  
13 that he was entitled to. So in that context, I would say  
14 that bonuses were discussed with Jeff Carpenter as they  
15 related to his employment agreement, prior to him coming  
16 on and joining the company. It was a very painstaking  
17 process of dotting the Is and crossing the Ts as you  
18 pointed out to make sure that employment agreement, which  
19 I'm referring to, had any of the discussions regarding  
20 bonus, that were laid out at the time.

21 Q. You're -- you said that the employment  
22 agreement, you were dotting the Is and crossing the Ts on  
23 it; is that what you were talking about?

24 A. Well, I think that Mr. Carpenter did a good job  
25 in negotiating every detail in having a written

1 memorialized agreement to enforce the issues that he  
2 negotiated with us and that we agreed to, that are within  
3 the scope of his employment agreement.

4 Q. You provided the information for the employer in  
5 the employment agreement, correct? Okay.

6 A. I don't understand the question, Ms. Gibson.

7 Q. Well, you -- in connection with that agreement,  
8 you provided the name of the employer, correct?

9 A. Yes, ma'am. I would say that that's --

10 Q. Okay.

11 A. -- an accurate depiction of what we provided,  
12 the employment agreement.

13 Q. All right. And if you take a look at the last  
14 page, you see the entity, this is Exhibit 2.

15 A. (Witness complies.)

16 Q. You see that you provided the entity names,  
17 Southwest Housing Management Company Inc.?

18 A. Yes.

19 Q. Okay. And you're aware that Southwest Housing  
20 Management Company Inc. does not actually exist as a  
21 legal entity?

22 A. No, I'm not. I'm not aware of that.

23 Q. You just looked at secretary of state records  
24 for the Southwest Housing Management Company.

25 You want to take at look at those again?

1           A.     Yes.

2                   MR. FRIEDMAN:   Your Honor, that's asking him  
3   for a legal conclusion, assumes facts not in evidence and  
4   lack of foundation, company exists.

5                   THE COURT:    She's asked him to look at it,  
6   the document.   So let him look at the document.

7                   MR. FRIEDMAN:   If the company didn't exist,  
8   we wouldn't be here.

9                   THE COURT:    Okay.

10                  THE WITNESS:   Yes, ma'am.

11                 Q.    (By Ms. Gibson)   And what was -- what's the name  
12   on the secretary of state records?

13                 A.    Well, to answer your question, to be clear, the  
14   employment agreement dated 2004, the company that you're  
15   speaking of was in existence.   The exhibit that you  
16   provided to me, Exhibit 39 and 40 are stamped by the  
17   secretary of state December 30th of 2010.   So could the  
18   entity that entered into his employment agreement in 2004  
19   no longer be in existence in 2010, after it was no longer  
20   in business?   The answer to that is yes.

21                 Q.    Ultimately, however, although you -- the  
22   articles of incorporation are for a corporation, this is  
23   a name that you-all sometimes used, company or  
24   corporation?

25                 A.    During the time of his -- of this existence,

1 yes, absolutely.

2 Q. Okay. Was this one of the agreements that was  
3 fully vetted by counsel?

4 A. I'm sure it probably was, but I don't recall.

5 Q. Do you recall telling Jeff Carpenter that you  
6 would try to catch up on past due earned annual bonuses?

7 A. I don't recall.

8 Q. You don't recall one way or the other?

9 A. One way or the other, I don't recall.

10 Q. Okay. Do you recall telling Jeff Carpenter that  
11 on top of catching up on past due annual bonuses that you  
12 would try to get an additional 50,000, once something  
13 happened with the McKinney properties or property?

14 A. No, I don't recall.

15 Q. You don't recall one way or the other?

16 A. No. I don't recall having those discussions.

17 Q. Do you deny --

18 A. One way or the other.

19 Q. -- do you deny saying that?

20 A. I don't recall.

21 Q. Okay. And do you recall telling Jeff that you  
22 hoped to be able to get him another 50,000 from the  
23 McKinney property?

24 A. I don't recall those discussions --

25 Q. You don't deny it though --

1 A. -- Ms. Gibson. I don't recall.

2 Q. Do you deny it?

3 A. I don't recall, that's my answer.

4 Q. You don't recall either way?

5 A. I don't recall either way, that is my answer.

6 MR. FRIEDMAN: Okay. This is argumentative,  
7 Your Honor.

8 Q. (By Ms. Gibson) And you were --

9 MS. GIBSON: We're already past it.

10 Q. (By Ms. Gibson) And you also mentioned that you  
11 wanted to get Jeff Carpenter another 200,000 and you were  
12 hoping that you could source that from the Vegas  
13 property, somewhere between 100 and 200, on a deal that  
14 was happening there?

15 A. I can tell you that that was not a conversation  
16 I recall having.

17 Q. Okay.

18 A. I mean, the company was losing money. We were  
19 not in a position to be throwing fifties and 100,000,  
20 \$200,000 out to employees. That just was not something  
21 that we were in a position to do or even think about  
22 doing.

23 Q. Well, Mr. Potashnik, you heard Keith Jones  
24 testify that while the management company that manages  
25 all of the properties will run negative, the organization



1 as a whole was profitable during the time --

2 MR. FRIEDMAN: Misstates Mr. Jones'  
3 testimony. He said the only company that was profitable  
4 was the construction company.

5 THE COURT: Let the witness handle that. If  
6 he thinks he's misstated.

7 Q. (By Ms. Gibson) He said the organization, as a  
8 whole, was profitable, which would include Southwest  
9 Housing Managements, Southwest Housing Development and  
10 Affordable Housing Construction?

11 A. Unfortunately, Ms. Gibson, and as a result of  
12 the company and the assets which were the basis of the  
13 company not performing, it was collectively losing money.  
14 And although there may have been a profitable entity  
15 amongst the three, but collectively it was a company that  
16 was losing money and needed to either go bankrupt or to  
17 sell.

18 Q. The financial condition of Southwest Housing  
19 Management improved during Jeff Carpenter's tenure,  
20 correct?

21 A. No.

22 Q. Jeff Carpenter also took some of the property  
23 expenses in-house to Southwest Housing Management to save  
24 you-all money in connection with your partnership  
25 interest in the properties, correct?

1           A.    No, that's not correct. In fact, during  
2   Mr. Carpenter's tenure the management company was losing  
3   more money than it ever had, Ms. Gibson.

4           Q.    What I'm talking about is -- for example,  
5   certain properties that you have a financial interest in,  
6   the actual apartment complex property sites had contracts  
7   that they were paying and Jeff Carpenter took those  
8   in-house, which saved money up to the organization as a  
9   whole?

10          A.    I don't know what contracts you're referring to  
11   and I don't know what the economic impact or end result  
12   of those contracts would have been to the company. So  
13   you're making an assumption that there was a particular  
14   function or a manner in which business was done that was  
15   somehow advantageous to us and I just cannot agree with  
16   that statement.

17          Q.    He took marketing in-house?

18          A.    And could you expand on what you're -- what you  
19   mean by "marketing"? I don't --

20          Q.    Taking it in-house, as opposed to paying a  
21   third-party vender, which is more expensive?

22          A.    Doing what?

23          Q.    Marketing.

24          A.    Well, what -- I mean, marketing encompasses a  
25   wide range of functions within our organization. I think

1 that you need to be more specific about what it was that  
2 you're referring to because it's all encompassing. I  
3 really need to know more information about what  
4 particular marketing aspects were being drawn in that you  
5 refer to in-house that was a, somehow, savings to our  
6 business.

7 Q. What does marketing mean to you?

8 A. It could mean a variety of things.

9 Q. Okay. So, for example, you-all had various  
10 printed marketing materials for the properties, correct?

11 A. Correct. I'm sure marketing brochures --

12 Q. Right?

13 A. -- rental brochures, things like that.

14 Q. Taking that as an example, Jeff Carpenter  
15 brought that in-house, which increased some costs of the  
16 management company, but saved money for the organization  
17 as a whole?

18 A. I don't recall us printing any -- or rental  
19 brochures or marketing brochures in our -- in-house. And  
20 on also in the event that we had, unaware of the economic  
21 benefit to the company and certainly not to me  
22 personally.

23 Q. Jeff Carpenter also took certain social services  
24 provided on site, he brought those in-house as well,  
25 correct?

1           A.    No, I disagree with that statement.

2                   MS. GIBSON:   Your Honor, I --

3                   THE COURT:   You have about two minutes  
4 before the break.

5                   MS. GIBSON:   Great.   I think this is a good  
6 time.

7                   THE COURT:   Do you want to take it now?

8                   MS. GIBSON:   Yes.

9                   THE COURT:   Okay.   We'll take our 15-minute  
10 break, ladies and gentlemen.

11                   THE BAILIFF:   All rise.

12                   (Jury ushered out.)

13                   (A break was taken.)

14                   THE COURT:   Go ahead, Ms. Gibson.

15                   MS. GIBSON:   Plaintiffs reurge the ability  
16 to ask and get into the stay bonuses that were paid to  
17 other employees, with respect to some of them being oral  
18 agreements.   We believe defendants have opened the door  
19 through their testimony about everything needing to be in  
20 writing.

21                   THE COURT:   Okay.   And do you maintain your  
22 earlier decision?

23                   MR. FRIEDMAN:   Yes we do, Your Honor.

24                   THE COURT:   Okay.

25                   MS. GIBSON:   And what?

1 MR. SANFORD: And nobody has ever sued  
2 them --

3 MS. GIBSON: And that nobody has ever sued  
4 them --

5 MR. SANFORD: -- for a bonus.

6 MS. GIBSON: -- for a bonus.

7 THE COURT: Well, then that's -- has someone  
8 else sued them other than Mr. --

9 MR. FRIEDMAN: No.

10 THE COURT: -- Carpenter?

11 MR. DONOHUE: No.

12 MS. GIBSON: I don't know.

13 THE COURT: Okay. Well, fair enough. The  
14 Court maintains its earlier ruling. But the question --  
15 and to go back to that, that was a nonresponse of -- he  
16 should not have said that. That was a violation of the  
17 motion of limine too when he said, no one's filed a  
18 grievance and no one's ever complained and all that,  
19 trying to avoid getting into all of that.

20 MS. GIBSON: And just -- just to -- before  
21 Jeff Carpenter is called, there will probably be another  
22 issue I want to take up, but I need to get finished.

23 MR. SANFORD: One other thing, I think to  
24 preserve error, we just have to make some kind of offer  
25 of proof, proffer or something --

1 THE COURT: He'll be here. You can make an  
2 oral offer at the end of day or if that doesn't work out,  
3 Mr. Potashnik will still be here at the end of the day,  
4 you can do question and answer.

5 MS. GIBSON: And Cheryl?

6 MR. SANFORD: And Cheryl?

7 MS. GIBSON: And Cheryl.

8 THE COURT: All right.

9 MR. FRIEDMAN: And me, I'll be here.

10 (Sotto voce discussion.)

11 THE BAILIFF: All rise.

12 (Jury ushered in.)

13 THE COURT: Jurors, please have a seat.

14 Have a seat, Mr. Potashnik.

15 Welcome back. Again, morning still, ladies  
16 and gentlemen. We'll pick up where we left off with  
17 Mr. Potashnik as a witness, Ms. Gibson is asking  
18 questions. And we'll ask her to pick up just where she  
19 left off.

20 Ms. Gibson -- and, of course, we'll go up to  
21 the middle of the noon hour before we take our lunch  
22 break.

23 DIRECT EXAMINATION (cont'd)

24 BY MS. GIBSON:

25 Q. Mr. Potashnik, as of October 31st, 2007 --

1 MS. GIBSON: Let me strike that.

2 Q. (By Ms. Gibson) Do you agree with Ms. Geiser  
3 that Jeff was not fired for any performance reasons?

4 A. Yes.

5 Q. Okay. Do you agree with Ms. Geiser that at the  
6 end of the day on October 31st, 2007, the organization  
7 just didn't need Jeff Carpenter anymore because of the  
8 management transition to the purchaser?

9 A. Yes.

10 Q. Do you agree with Ms. Geiser that Mr. Carpenter,  
11 during his employment, was never disciplined?

12 A. I'm not aware.

13 Q. Do you agree with Ms. Geiser that during Jeff  
14 Carpenter's employment he was never written up?

15 A. I'm not aware.

16 Q. Did you ever write up Mr. Carpenter?

17 A. Me, personally, I did not.

18 Q. Did you ever discipline Mr. Carpenter?

19 A. Yes.

20 Q. You have? How many occasions?

21 A. We had --

22 Q. Well -- okay.

23 A. I --

24 Q. I like to let witnesses --

25 A. -- can't tell you. I don't know how many

1 occasions.

2 Q. Okay.

3 A. I don't recall.

4 Q. At no time during Mr. Carpenter's employment did  
5 you recommend that he be fired for performance, correct?

6 A. Did I recommend to whom?

7 Q. To anyone?

8 A. I don't recall.

9 Q. You don't recall one way or the other?

10 A. No, I don't recall one way or the other.

11 Q. Okay. During Jeff Carpenter's employment, you  
12 would, at times, meet with Jeff Carpenter at your home?

13 A. It was not unusual for us to meet employees at  
14 our home, many employees.

15 Q. My question is: During Jeff Carpenter's  
16 employment, you sometimes met with him at your home?

17 A. We may have and like I said, it would not be  
18 unusual as we have met with many employees at our home.

19 Q. During Jeff Carpenter's employment, your  
20 families had Thanksgiving together?

21 A. I don't recall.

22 Q. Do you believe that Mr. Carpenter was entitled  
23 to trust your word?

24 A. Yes, absolutely.

25 Q. Do you recall that the date that you found out,



1 in late September, that you would be -- that you would be  
2 indicted?

3 A. No, I don't recall the date specific.

4 Q. It was close to the management transition,  
5 wasn't it, Mr. Potashnik? It was close to  
6 November 1, 2007?

7 A. It may have been.

8 Q. And during the criminal investigation, you had  
9 maintained to Jeff Carpenter that you had done nothing  
10 wrong, correct?

11 MR. FRIEDMAN: You know, Judge, this is  
12 violation of the limine.

13 THE COURT: All right.

14 MR. FRIEDMAN: Let's approach.

15 (Off-the-record discussion.)

16 MR. FRIEDMAN: Ruling, please?

17 THE COURT: Objection sustained.

18 MR. FRIEDMAN: Thank you.

19 Q. (By Ms. Gibson) Mr. Potashnik, in connection  
20 with the criminal proceedings, you ultimately plead  
21 guilty, correct?

22 A. I -- could you please expand on what you mean by  
23 proceedings? The criminal trial? Criminal case?

24 Q. Well, there was a criminal investigation of you?

25 A. Oh, okay, yes. Yes, I did ultimately plead

1 guilty.

2 MS. GIBSON: Pass the witness.

3 THE COURT: Okay. Mr. Friedman?

4 MR. FRIEDMAN: Nothing further.

5 THE COURT: Thank you, Mr. Potashnik.

6 MR. FRIEDMAN: Your Honor, we have -- had a  
7 witness fly in from Puerto Rico and has to go back to  
8 Puerto Rico so we want to put him on --

9 What's his name? Mark Jones.

10 THE COURT: All right. Have you conferred  
11 with the other side?

12 MR. FRIEDMAN: He just showed up.

13 MS. GIBSON: Mark --

14 THE COURT: If y'all come over here.

15 (Discussion off the record.)

16 THE COURT: Ladies and gentlemen, we're  
17 going to take a witness out of order. It's still  
18 Ms. Gibson's turn to call witnesses in the first  
19 instance, but we're going to switch now for a witness who  
20 will be unavailable at another time. And asked  
21 Mr. Donohue, I believe --

22 MS. GIBSON: And --

23 THE COURT: Mr. Donohue, you doing the  
24 direct examination? Mr. Donohue to call the next  
25 witness.

1 MS. GIBSON: -- and, Your Honor, can -- just  
2 to be clear, can you just clarify this is defendant's?

3 THE COURT: That's what I was -- I hope that  
4 was clear. This is defendant's witness, not -- not  
5 Mr. Carpenter's witness.

6 Mr. Jones, if you come over here (pointing).  
7 Before you step up there, I'm going to swear you in as a  
8 witness. Raise your right hand.

9 (Witness sworn.)

10 THE COURT: Have a seat.

11 Mr. Donohue, will ask you questions first.

12 MARK JONES,  
13 having been first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. DONOHUE:

16 Q. Please state your full name.

17 A. Mark Anthony Jones.

18 Q. And, Mr. Jones, were you formerly employed by  
19 any of the Southwest Housing entities?

20 A. Yes.

21 Q. All right. Who were you employed by?

22 A. By Brian and Cheryl Potashnik.

23 Q. Okay. And who are Brian and Cheryl Potashnik?

24 A. The owners of Southwest Housing.

25 Q. All right. And what did you do for Brian and

1 Cheryl Potashnik at Southwest Housing?

2 A. My role was vice president of the community  
3 development.

4 Q. And what did that entail?

5 A. I work with Brian and Cheryl on the development  
6 side, as well as the construction side, as well as work  
7 with them on the management side of their business. We  
8 were a affordable housing developer. And we owned family  
9 practice -- I mean, family properties, as well as senior  
10 properties.

11 Q. All right. And when did you start with the  
12 Potashniks there at Southwest Housing?

13 A. 2001.

14 Q. All right. So you were there when Mr. Carpenter  
15 was hired in 2004?

16 A. Yes.

17 Q. And what was Mr. Carpenter's -- Jeff Carpenter's  
18 position there at Southwest Housing?

19 A. He was hired as the president of the management  
20 company.

21 Q. Southwest Housing Management Company?

22 A. That is correct.

23 Q. And did you work with or interact with  
24 Mr. Carpenter --

25 A. Sure, I did.

1 Q. -- at all?

2 A. Yes, sir.

3 Q. So you had an opportunity to observe him as the  
4 president of Southwest Housing Management?

5 A. Absolutely.

6 Q. At the time -- now, Southwest Housing eventually  
7 sold to Cascade Affordable Housing; is that right?

8 A. Yes, they did.

9 Q. All right. Approximately when was that?

10 A. 2009, maybe. '07, I don't remember exactly.

11 Q. And what was your -- were you involved at all  
12 with the sale of the company?

13 A. Not directly involved. It was very important  
14 that we -- we had gotten a lot of negative press as of  
15 late before the sale.

16 Q. All right.

17 A. And so it was very important to talk about --  
18 the deal with our employees, our residents, they watch  
19 the news.

20 Q. All right.

21 A. And so we talked with many of our residents and  
22 many of our team members about the things that they were  
23 seeing on -- on the news weren't necessarily true.

24 Q. All right. Were there discussions ongoing at  
25 that time about the prospect of selling the company?

1 A. Sure. Sure.

2 Q. All right.

3 A. When you're in the middle of something like  
4 that, it was a lot of rumors going around.

5 Q. All right. Both with the employees as well  
6 as --

7 A. Everybody.

8 Q. -- the residents?

9 A. Yeah, everybody.

10 Q. And the property managers themselves?

11 A. Everybody. Everybody gets -- get wind of all  
12 kinds of things and so it's -- Brian and Cheryl tried to  
13 mediate some of that, calm it down. Brian personally  
14 went around to the properties, talked with residents,  
15 talked with property managers that we were facing this  
16 and gone be fine.

17 Q. All right. And your role there at Southwest  
18 Housing, did you interact much with Mr. Brian Potashnik,  
19 himself?

20 A. Absolutely, both Brian and Cheryl Potashnik.

21 Q. All right. On a -- on a pretty regular basis?

22 A. We're family.

23 Q. You're family?

24 A. That's right.

25 Q. What does that mean when you say --

1           A.     That means that Brian and Cheryl Potashnik came  
2     into -- first of all I'm from Dallas, born and raised  
3     here. Went to high school here, grew up in the inner  
4     city here, lived in apartments here. I've been very  
5     fortunate in my life to do better and to be able to come  
6     back into a community that I call home and provide  
7     affordable housing and provide the nicest, new apartments  
8     that our community had seen in 25 years, was a very big  
9     deal.

10                     I was introduced to Brian Potashnik by  
11     former mayor, Ron Kirk, who was a church member of mine  
12     and who I helped on his campaign. Brian was having a  
13     ribbon cutting and Brian invited me, he introduced us.  
14     That led to me having a contract with him because I was  
15     doing other things. I was installing cabling and  
16     wiring -- at a company that I was installing cabling with  
17     and he gave us a contract. After we did -- we did the  
18     contract, Brian approached me afterwards, knew that -- I  
19     had some pretty good ties in relationship to the  
20     political world and made me an offer. But the thing that  
21     made him more attractive to me is that he offered me an  
22     opportunity to learn how to do this.

23           Q.     Okay. And so was part of your job interacting  
24     with the community there in the -- the area where this  
25     affordable housing was being constructed, developed and

1 then tenants were living?

2 A. Absolutely. We -- many people have a negative  
3 connotation of apartments. And one of the  
4 responsibilities I was charged with is to give them a  
5 better perception of apartments. This wasn't the  
6 traditional apartments. We were doing all kinds of  
7 things. We were creating an environment that families,  
8 as well as seniors, were going to have a wonderful place  
9 to live. The quality of life, they had never seen  
10 anything to the quality we were building.

11 Q. All right. And did -- did Mr. or Mrs. Potashnik  
12 have any role also, along with you, as far as mixing with  
13 the community, both tenants, prospective tenants and the  
14 property management people on site with the various  
15 properties?

16 A. On any given Sunday, you could find Brian and  
17 Cheryl out at our apartments --

18 Q. What --

19 A. -- riding --

20 Q. Go ahead.

21 A. -- riding and visiting, looking, making sure  
22 things were up to their standard. Residents knew Brian  
23 personally. Many of them had his cell phone number and  
24 they would use it too.

25 Q. And what about when Mr. --



1 A. I'm sorry.

2 THE COURT: I'm sorry.

3 THE COURT REPORTER: Sir, you may want to  
4 move back a little bit.

5 THE WITNESS: Oh, that's a lot of base,  
6 Judge.

7 THE COURT: All right.

8 Q. (By Mr. Donohue) When Mr. Carpenter came on  
9 board, he was the president of Southwest Housing  
10 Management?

11 A. Yes, sir.

12 Q. So he was overseeing managing the various  
13 properties that the tenants lived in; is that right?

14 A. That is correct.

15 Q. All right. And did Mr. Carpenter take a same or  
16 similar -- or what kind of approach, if any, did  
17 Mr. Carpenter take with respect to the residents of the  
18 various communities?

19 A. I think that Mr. Carpenter --

20 MS. GIBSON: Object to relevance.  
21 Performance is not at issue in this case.

22 MR. DONOHUE: They sued for quantum of merit  
23 also, Your Honor. They put a value of his services.

24 THE COURT: Overruled.

25 Q. (By Mr. Donohue) Mr. Jones, what kind of role,

1 if any, did Mr. Carpenter take with respect to the  
2 various communities, the residents, the property  
3 management, the property manager on site that you  
4 observed?

5 A. Mr. Carpenter was a manager. He was the  
6 president of the management company. He was dedicated to  
7 leasing up the properties, dedicated to his team in terms  
8 of managing them, hiring managers, hiring leasing  
9 managers, that was his role.

10 Q. All right. In the entire time that you were  
11 there -- and you were there at Southwest Housing  
12 Management until it sold to Cascade?

13 A. That is correct.

14 Q. All right. Did you ever observe Mr. Carpenter  
15 do anything above and beyond what his role was as  
16 president of Southwest Housing Management?

17 A. No. He was -- he did his job.

18 Q. He did his job?

19 A. Yes, sir.

20 Q. All right. And do you know -- did you ever hear  
21 him complain in your presence about not being paid his  
22 salary for doing his job?

23 A. No, I never heard that.

24 Q. When the company was being considered to be  
25 sold, do you -- being around Mr. Potashnik, and Mr.

1 Potashnik in particular, did he ever express any concerns  
2 to you about people, employees in particular, leaving in  
3 mass exodus?

4 A. Leaving our company?

5 Q. Yes.

6 A. No, absolutely not.

7 Q. He didn't express any concern about employees  
8 leaving because the company was being sold or even the  
9 fact that he got indicted?

10 A. No. Again -- can --

11 MR. FRIEDMAN: Mr. Donohue.

12 THE WITNESS: I'm sorry?

13 MR. FRIEDMAN: Mr. Donohue --

14 THE WITNESS: Yes.

15 MR. FRIEDMAN: I'm sorry to interrupt. I  
16 thought you were searching for the name.

17 THE WITNESS: No, I don't need his name.

18 MR. FRIEDMAN: Neither do I.

19 THE WITNESS: Yeah. It was a very difficult  
20 time. Very difficult in our -- in our business. Very  
21 difficult time in Brian and Cheryl's life. But Brian  
22 assured them, he assured residents and he assured the  
23 employees that we would deal with it. It, being whatever  
24 we had to face.

25 Q. (By Mr. Donohue) All right. Did employees

1 leave in mass exodus?

2 A. Absolutely not.

3 Q. Was there any employees you know of that weren't  
4 paid when they were looking to sell the company?

5 A. No. I don't know anything about nobody not  
6 being paid. Nobody said anything about not getting their  
7 check.

8 Q. Did you get the impression that employees were  
9 wanting to leave the company?

10 A. No, I didn't get that impression.

11 Q. Did -- are you --

12 A. I'm finished with that statement.

13 Q. Okay. Are you familiar with the term or ever  
14 heard the term "stay bonus"?

15 A. No, I never heard of that.

16 Q. Did you ever discuss or hear Mr. Potashnik  
17 discuss bonuses with the company?

18 A. No. But I will say this, Brian is a performance  
19 person. Perform --

20 THE COURT: Wait for Mr. Donohue to ask the  
21 question.

22 Q. (By Mr. Donohue) Okay. So what you're saying  
23 is perform and you'll be rewarded?

24 A. That's the way that the model has been the whole  
25 time I was there.

1 Q. All right. So if the company doesn't make  
2 money, you can't expect Mr. Potashnik to reward somebody  
3 if they don't -- if the company is not making money?

4 A. Perform.

5 Q. Would you consider that performance as making a  
6 profit?

7 A. Absolutely.

8 Q. Were there -- did Mr. Potashnik or  
9 Mrs. Potashnik ever express to you that there were  
10 employees that were essential to stay with the company or  
11 otherwise it would be less attractive to a suitor, to a  
12 buyer?

13 A. That didn't exist. There was no one person that  
14 made Southwest Housing, not even me. Southwest Housing  
15 was a -- was a corporation that started out a mom and pop  
16 that grew into this mega affordable housing company. And  
17 it grew to that because of the risk that Brian and Cheryl  
18 were willing to take. Their ability to attract the kind  
19 of talent that we were able to attract. And so no one  
20 person made those kinds of -- made that kind of impact on  
21 our business.

22 Q. All right. Did Mr. Carpenter make such an  
23 impact that you perceived -- or you ever heard either of  
24 the Potashniks say don't leave Mr. Carpenter, we got to  
25 have you for this upcoming sale --

1           A.    Mr. Donohue, no one person made that kind of  
2    impact on our business.

3           Q.    And I take it including Mr. Carpenter?

4           A.    Absolutely.

5           Q.    What was your understanding of Mr. -- I know he  
6    was the president of the management company, but --

7           A.    Yes.

8           Q.    -- what was your understanding, based on what  
9    you observed him -- of him at work, was his role there at  
10   the company?

11          A.    Well, my understanding of the reason that  
12   Mr. Carpenter was hired is because we were trying to  
13   move forward. We had built a great model. We weren't  
14   looking for a savior. We were looking for someone to  
15   extend the success that we were having. We had grew to a  
16   great capacity and we were looking for, in the future,  
17   it growing even bigger. And so we needed somebody to  
18   take that off of Mr. Potashnik's plate.

19          Q.    Do you have any understanding of how  
20   Mr. Carpenter represented himself as far as the -- as  
21   what you just expressed, coming into the company in 2004?

22          A.    He represented himself as the president of the  
23   management company.

24          Q.    All right. Did he represent himself in any way  
25   as far as having the experience and the know-how to take

1 the company to the level that you're speaking of that it  
2 was looking to be taken to?

3 A. In terms of our management company, we thought  
4 that -- Brian and Cheryl believed that he had the  
5 expertise to do that.

6 Q. Did that prove to be the case?

7 A. I don't think it worked out that way.

8 Q. Why not?

9 A. Just because of -- I don't think that  
10 Mr. Carpenter was very comfortable with the portfolio of  
11 the people that we served.

12 Q. What do you mean by that, the portfolio of the  
13 people that we served?

14 A. We -- we were predominately in a -- in minority  
15 communities, which means that the majority of the tenants  
16 who we served were minorities, which means that we were  
17 trying to make it reflective of the people who lived  
18 there, the people who worked there. And so I don't  
19 always think that Mr. Carpenter was very comfortable in  
20 that environment.

21 Q. All right. What do you say as far as -- or why  
22 do you say that he wasn't comfortable? Was he just  
23 different in his management style then -- or what?

24 A. Yeah. The Potashniks saw our business one way  
25 and he was a numbers cruncher guy and he saw it another

1 way.

2 Q. Well, how did the Potashniks see the business?

3 A. They saw the business almost like a mission in  
4 providing affordable housing or providing housing and the  
5 services that we were attracting to people who -- who  
6 were less fortunate. And to the point that Mr. Potashnik  
7 and I -- we catch phrase, a coined, it said that we  
8 weren't in the apartment business, we were in the people  
9 business.

10 We were being denied in a lot of the areas  
11 around the city and other parts of the state. People in  
12 neighborhoods and homeowners were protesting us all  
13 around and we had to put a face on this. We had to put a  
14 face on the kind of people that had an opportunity to  
15 live on our properties and we did that. They were nurses  
16 assistants, they were one-year firefighters, they were  
17 the bank tellers, they were the people who cleaned the --  
18 who worked at nursing homes. And so we had to put a face  
19 on those people. And once we were able to identify who  
20 and who could afford to live there, we took away from  
21 being in the apartment business and we were in the people  
22 business.

23 Q. All right. And that is what you're saying was  
24 the focus of the Potashniks?

25 A. That's exactly what I'm saying.



1 Q. And Mr. Carpenter wasn't so much into that, but  
2 more of the number cruncher in the background?

3 A. That's the way I believe Mr. Carpenter to be --  
4 a-matter-of-fact guy, by the book, get the numbers done.

5 Q. When investors -- potential investors and actual  
6 investors came to Southwest Housing to view the sites,  
7 who did Mr. Potashnik call on in the company to tour or  
8 visit those properties with those investors or potential  
9 investors?

10 A. Many of the people who we were -- we were going  
11 to do showcase property, I took them on tour, I took them  
12 around. I took the political people around. We were  
13 going into neighborhoods where we needed to -- we needed  
14 political support. Typically they would get to town and  
15 I would get -- we would get one of our -- use one of our  
16 buses and I would give them a tour.

17 Q. All right. And did Mr. Carpenter have any role,  
18 in particular, with respect to investors or potential  
19 investors as far as touring them around and showing them  
20 the properties?

21 A. It wouldn't have been --

22 MS. GIBSON: Object to lack of foundation.

23 THE COURT: All right.

24 MR. DONOHUE: I'll withdraw the question.

25 Q. (By Mr. Donohue) Who lead the effort to house

1 Katrina evacuees?

2 A. Who led the efforts to do what?

3 Q. To house Hurricane Katrina evacuees?

4 A. Brian Potashnik. Brian Potashnik and I.

5 Q. All right. What -- what was your role and  
6 Mr. Potashnik's in that evacuation for Hurricane Katrina?

7 A. Brian and I flew to Houston after him getting a  
8 call that there were seniors in the Astrodome floor  
9 that -- we had just finished a couple of beautiful  
10 properties. They had just got the seal that Friday. I  
11 believe the hurricane hit that Saturday. And we flew  
12 it -- flew down and he took our buses and we started  
13 bringing seniors from the Astrodome to our properties.

14 Q. All right. And were these properties all --  
15 what -- when you say, "our properties," can you describe  
16 what do you mean by "our property", were they finished,  
17 were they constructed --

18 A. We -- we just gotten the key to them. Which  
19 means that the city had just approved all the permits,  
20 right to move in, we never started leasing or anything.  
21 We just opened them up and started handing out keys to  
22 seniors.

23 Q. So these were brand new properties that --

24 A. Yes, sir.

25 Q. -- you're handing keys to Hurricane Katrina

1 evacuees?

2 A. And I don't like the word "evacuee." They were  
3 people who had -- a storm had hit in New Orleans and they  
4 needed a place to live, place to stay.

5 Q. People in need, due to the hurricane?

6 A. Absolutely.

7 Q. Okay. What role did Mr. Carpenter play with  
8 respect to dealing with the Hurricane Katrina people that  
9 were in need --

10 A. He had hired management --

11 MS. GIBSON: Lack of foundation.

12 THE COURT: You're also getting beyond the  
13 scope of what you're telling me, you were -- the  
14 relevance of --

15 MR. DONOHUE: Your Honor, we anticipate  
16 Mr. Carpenter will testify as far as additional  
17 responsibilities in his quantum merit claim that he was  
18 spearheading the evacuation for Hurricane Katrina and  
19 Maria and that's what the scope is.

20 THE COURT: Okay. Go ahead. The  
21 objection's overruled.

22 MS. GIBSON: Okay.

23 THE WITNESS: What was the question?

24 Q. (By Mr. Donohue) Yes. My question is: What  
25 role did Mr. Carpenter have and was he the spearhead with

1 respect to the -- the efforts made on behalf of Southwest  
2 Housing and Mr. Potashnik for the hurricane?

3 A. Mr. Carpenter had already put a management team  
4 in place in Houston. So he had fulfilled his obligation.  
5 Once those people were in place, Brian and I went down  
6 and we began to give them a place to live.

7 Q. And Mr. Carpenter, was he spearheading that?

8 A. What do you mean spearheading? What does that  
9 mean?

10 Q. Was he leading that effort?

11 A. No, Brian Potashnik.

12 Q. I understand.

13 But what -- just to be clear, Mr. Carpenter  
14 was not leading that effort?

15 A. He was not there.

16 Q. He wasn't even there?

17 A. No, he wasn't there.

18 Q. Was he there at all? Did he go down to  
19 Hurricane -- to Houston to deal with --

20 A. I believe he did come down eventually. We were  
21 there a week. I don't know when exactly he came.

22 Q. All right. Were there other Southwest Housing  
23 employees other than Mr. Carpenter that came down either  
24 initially or later?

25 A. Yes.

1 Q. So there was --

2 A. Many -- many of our team members came down.

3 Q. Was Mr. Carpenter essential for the properties  
4 to perform?

5 A. It was his job to make sure they performed.

6 When you say "essential," he was responsible for it.

7 Q. Was he replaceable?

8 A. Everybody's replaceable.

9 Q. How did the employees feel about Mr. Carpenter?

10 A. They worked for him. They were willing to work  
11 for him because Brian -- when Brian and Cheryl gives you  
12 the endorsement, our staff was going to work with  
13 whoever.

14 Q. So because he was hired by Brian --

15 A. And Cheryl Postashnik.

16 Q. -- the employees worked for him?

17 A. Absolutely.

18 Q. You believe that was out of respect for  
19 Mr. Carpenter or out of respect for Mr. Potashnik?

20 A. In terms of -- I don't know what the -- the  
21 reasoning for -- they respect protocol and they respect  
22 the hierarchy of how our company was operated and ran.

23 Q. What was the mood of the company at the time of  
24 the investigation -- the FBI investigation and leading up  
25 to the sale?

1           A.     Indifferent. People didn't believe that this  
2 was happening. They couldn't believe that Brian and  
3 Cheryl Potashnik had done anything wrong.

4           Q.     So there was no mass exodus of people?

5           A.     No, sir.

6           Q.     There was no mass exodus contemplated, at least  
7 voiced to you or that you heard people leaving in droves?

8           A.     No, sir.

9           Q.     If Mr. Carpenter alleges that he took control of  
10 the FBI investigation and the company hysteria, once this  
11 FBI investigation began in June of 2009; would that be  
12 true?

13          A.     When he took control of it?

14          Q.     Yes.

15          A.     What does that mean?

16          Q.     That he took control as far as responding to FBI  
17 subpoenas and dealing with the criminal defense lawyers,  
18 all of that?

19          A.     He was given direction by the Potashniks to give  
20 whatever information the FBI wanted. That is true.

21          Q.     So he followed the Postashnik's direction to  
22 give the FBI whatever they needed?

23          A.     Absolutely.

24          Q.     So the -- the people in control in that, you're  
25 saying is the Potashniks and not Mr. Carpenter --

1 A. Absolutely --

2 Q. -- he was just following directions?

3 A. Yes, sir. That is what I'm saying.

4 Q. And was there any hysteria with the company?

5 A. No. There was -- it was too much --

6 Q. You said it was indifferent?

7 A. -- it was too much indifferent to be -- to have  
8 hysteria. We had a job to do. And we had to do our  
9 jobs, all of us. We had to get our properties leased.  
10 We had to service the residents in which lived on our  
11 property. We had a great deal of seniors -- senior  
12 properties. And seniors by themselves can be  
13 challenging. And so we had to deal with all that we had  
14 to deal with on a day-to-day basis. The extra of the  
15 FBI's investigation was just that.

16 Q. How did the employees feel about Mr. Potashnik  
17 and Mrs. Potashnik?

18 A. They feel -- they embraced Mr. Potashnik, all of  
19 them did. Both -- both of the Potashniks were embraced  
20 by -- again, not just by employees, but by residents.

21 Q. And that held true for all three of the  
22 Southwest Housing entities?

23 A. Yes, that's correct.

24 Q. Do you recall flying to Las Vegas with  
25 Mr. Potashnik and Paul Cohen and Aaron Goldstein at one

1 point?

2 A. I don't remember. I don't recall a flight.  
3 I've -- we've flown to Vegas before. We've flown a  
4 number of places before.

5 Q. Did you ever -- were you ever present when Brian  
6 Potashnik supposedly discussed anyone -- with anyone that  
7 Mr. Carpenter was going to be given a significant bonus  
8 and become a part of the millionaire's club?

9 A. No, I never heard any of that.

10 MR. DONOHUE: I'll pass the witness.

11 THE COURT: Ms. Gibson?

12 CROSS-EXAMINATION

13 BY MS. GIBSON:

14 Q. Mr. Jones, given your relationship to the  
15 Potashniks, and that y'all are family, is it fair to say  
16 that you don't have anything bad to say about them?

17 A. Oh, I got some bad stuff to say about Brian.  
18 We've bumped heads a number of times, but that's what  
19 families do.

20 Q. Okay. With -- with respect to the negative  
21 press that was happening, if I understand you correctly,  
22 employees really -- really trusted in the Potashniks,  
23 nonetheless?

24 A. Yes, ma'am.

25 Q. Okay.



1 A. I believe that to be true.

2 Q. All right. If Mrs. Potashnik testified that  
3 they discussed the need to try and keep groups of  
4 important employees on because of the asset sale, would  
5 you have any reason to doubt that?

6 MR. DONOHUE: Objection. Vague.

7 THE COURT: Overruled.

8 If you don't understand the question tell  
9 her.

10 MS. GIBSON: You can answer.

11 THE WITNESS: Can I -- oh.

12 THE COURT: You can answer the question.

13 THE WITNESS: I believe that in the midst of  
14 this sale, it was very important we showed some  
15 stability. And so be it, management, construction or  
16 whatever. But that -- there wasn't a number of people  
17 leaving because Southwest Housing was a very, very good  
18 place to work.

19 Q. (By Ms. Gibson) And if -- if Ms. -- I'm sorry.  
20 I keep saying Potashnik.

21 If Ms. Geiser testified that she intended to  
22 pay employees bonuses out of sale proceeds as an  
23 incentive for them to stay on, would you have any  
24 doubt --

25 MR. DONOHUE: Your Honor, this --

1 Q. (By Ms. Gibson) -- would you have any reason to  
2 doubt that?

3 MR. DONOHUE: -- this is encroaching on the  
4 limine --

5 MS. GIBSON: No.

6 THE COURT: Overruled.

7 THE WITNESS: Okay. First of all, who's  
8 Ms. Geiser?

9 THE COURT: Mrs. Potashnik.

10 Q. (By Ms. Gibson) Mrs. Potashnik.

11 A. And so the question is: Mrs. Potashnik did  
12 what?

13 Q. If Mrs. Potashnik testified that she -- that she  
14 and Brian intended to pay employees out of sale proceeds  
15 as an incentive to get people to stay on, would you have  
16 any doubt about that?

17 MR. DONOHUE: Objection. Misstates  
18 Ms. Geiser's testimony.

19 THE COURT: Overruled.

20 THE WITNESS: I would have no reason to  
21 believe that -- if she said that, I would have no reason  
22 not to doubt her, if she said that.

23 Q. (By Ms. Gibson) Okay. And if -- everyone in  
24 an organization is important, correct?

25 A. I believe that.

1 Q. But among everyone who's doing their job, there  
2 are some people who are treated as more key than others?

3 A. I agree with that.

4 Q. And even though the employees believed in the  
5 Potashniks during the criminal investigation, if key  
6 employees left, it might be hard to hire new people  
7 because of the negative press at the time, correct?

8 A. Well, if key employees leave the sale of a  
9 business, the new -- the new company who's buying the  
10 business typically have their own people in place.

11 Q. Correct.

12 But if --

13 A. So how does that -- how does that effect it?

14 Q. But you had talked about the importance of  
15 stability --

16 A. I do.

17 Q. -- leading up to the asset sale?

18 A. That's right.

19 Q. And if they're -- if important employees left,  
20 leading up to the asset sale, it might be harder -- not  
21 impossible -- but harder to replace -- to replace them  
22 because of all the negative press at the time?

23 A. It may be harder to replace them to who?

24 Q. At -- before the asset sale, at Southwest  
25 Housing?

1           A.    From my knowledge of our business, the most  
2   important thing to that asset sale is that there was not  
3   a mass exit of renters, not employees.

4           Q.    But you -- you need employees to help keep  
5   apartments leased up?

6           A.    But you -- you need people paying rent.

7           Q.    Correct.

8                   And --

9           A.    Because everybody else can be replaced.  It's a  
10   lot more difficult -- remember, the quality of what we  
11   built attracted both renters and people who wanted to  
12   work.  So attracting help was not an issue.  People  
13   wanted to work in this very nice, new environment.  And  
14   the reason they wanted to work in this very nice, new  
15   environment is because many of them were close to home.  
16   Our community and the properties that we built were in  
17   the homes -- or in the areas in which the employees  
18   worked and where they lived.  And so it wasn't that  
19   difficult to attract new work.

20          Q.    And you're talking about at the site level, at  
21   the apartment complexes, themselves?

22          A.    I'm saying at any level.

23          Q.    Okay.

24          A.    We didn't have -- we didn't have any finding an  
25   employee issue.

1 Q. Okay. So for example, if the chief financial  
2 officer left, you don't think there would be any problem  
3 getting a new CFO in light of the negative press?

4 A. No, ma'am, I don't think so.

5 Q. Okay. How often did you see Jeff Carpenter?

6 A. Once, twice a week.

7 Q. Once or twice a week?

8 A. Yeah.

9 Q. And in what -- what were y'all doing once or  
10 twice a week?

11 A. We were passing each other. We office in the  
12 same office.

13 Q. Okay. So you would see Jeff Carpenter once or  
14 twice a week, passing each other in the office?

15 A. For the most part.

16 Q. What else? Anything else?

17 A. That was -- most of the time where I saw him in  
18 or out of the office. I was -- I spent most of my time  
19 out on the properties, visiting the properties, visiting  
20 construction sites, that kind of thing. So when I came  
21 to the office or whatever, a day or two I would see Jeff  
22 there.

23 Q. All right. And so is it fair -- is it fair to  
24 say that you and Jeff did not actually see each other  
25 very often while you worked together?

1 A. That's pretty accurate.

2 Q. Okay. So would it be fair to say, you -- you  
3 don't know -- you weren't with Jeff to see what he did  
4 most of his time?

5 A. I did not share the office with Jeff.

6 Q. And where -- what was your -- did you have a  
7 territory or an area you covered or did you cover all of  
8 Texas?

9 A. I covered wherever the Potashniks owned  
10 property.

11 Q. I'm sorry. I couldn't hear you.

12 A. I covered wherever the Potashniks owned  
13 property.

14 Q. Okay. In Texas?

15 A. Wherever.

16 Q. Vegas?

17 A. Wherever.

18 Q. Okay. You talked about the company growing --

19 A. In the beginning.

20 Q. Right.

21 A. Yes, ma'am.

22 Q. From small to much larger?

23 A. Yes, ma'am.

24 Q. And you said that Jeff Carpenter was kind of a  
25 numbers guy?

1 A. I believe it -- yes.

2 Q. By the book, get the numbers done?

3 A. Huh?

4 Q. By the book, get the numbers done?

5 A. Yes.

6 Q. Okay. But if that's what he was doing, do you  
7 have any doubt that the Potashniks hired him to be that  
8 person, to be the numbers person?

9 A. I do believe that's why they hired him.

10 Q. Okay. You talked -- you talked about tours,  
11 taking -- taking political people around?

12 A. Yes, ma'am.

13 Q. Was that -- was that in connection with the  
14 asset sale or something -- or just a regular part of your  
15 job?

16 A. That's everybody, asset sale, people in general.  
17 Nobody can tell the Southwest Housing story better than  
18 me.

19 Q. Okay.

20 A. One, because I lived it. Number two, my -- my  
21 grandmother lived on one of our properties.

22 Q. And when it came to touring or meeting with  
23 potential purchasers or investors, did you play a role in  
24 that?

25 A. I didn't meet them. At Brian and Cheryl's

1 direction, I gave them tours. I talked about what we do.  
2 I talked about the way we do what we do.

3 Q. Do you know whether or not they also, at times,  
4 asked Jeff Carpenter to meet with potential purchasers  
5 and investors?

6 A. That wouldn't surprise me if they did.

7 Q. Okay. You -- you talked about efforts and  
8 Hurricane Katrina --

9 A. Uh-huh.

10 Q. -- to help people out because you-all had  
11 available properties?

12 A. Yes, ma'am.

13 Q. And you said that Jeff -- I think -- did you say  
14 Jeff Carpenter was never there?

15 A. No, I didn't say he was never there. I said I  
16 don't know when he came. I said that Jeff had hired  
17 staff in place in Houston. And when Brian and I went  
18 there, the staff was in place for us to be able to give  
19 the keys and allow people to have a place to live.

20 Q. Are you aware that although -- you know, I don't  
21 know the -- I don't know the time line for Katrina --

22 A. Nor do I.

23 Q. -- but are you aware that Jeff Carpenter  
24 ultimately spent quite a bit of time in Houston, helping  
25 out?



1           A.    No.   I wasn't aware of him spending quite a bit  
2   of time there.   I wasn't aware of Jeff spending quite a  
3   bit of time of -- any of our properties.

4           Q.    Okay.   Mr. Jones, you talked a little bit about  
5   Jeff Carpenter's role for management.   Can you explain a  
6   little bit further about what your understanding of his  
7   job duties were?

8           A.    Well, president of the management company is  
9   very overlapping.   That's exactly what -- our management  
10   company was growing by leaps and bounds.   He hired  
11   people, he put things in place.   They were going.   They  
12   were going and going.   We were building new properties.  
13   On average, we may have been doing five to ten new  
14   developments a year.   He was consulting back and forth  
15   with the management company -- or with the development  
16   company and construction on how this would be built and  
17   how that would be built.   And so he had a vast job.   It  
18   was a big job, managing the management company.

19                   MS. GIBSON:   Pass the witness.

20                   THE COURT:   Mr. Donohue?

21                   MR. DONOHUE:   Yes.

22                               REDIRECT EXAMINATION

23   BY MR. DONOHUE:

24           Q.    What you described, Mr. Jones, that was part and  
25   parcel of his role -- Mr. Carpenter's role as a president

1 of Southwest Housing Management, right?

2 A. Absolutely.

3 Q. Same goes for anything he was doing with respect  
4 to hiring staff to go down to Hurricane Katrina?

5 A. That's correct.

6 Q. And doing so at the direction of the Potashniks?

7 A. That's correct.

8 Q. Which he was paid for?

9 A. I wouldn't think -- he wasn't doing it for free.

10 Q. Right.

11 Did you ever hear Mr. Carpenter claim that  
12 he had some kind of agreement with Brian Potashnik to be  
13 paid a million dollars or something like that, close to  
14 a million-dollar bonus?

15 A. I never heard anything like that.

16 Q. When you said that you were not aware of  
17 Mr. Carpenter spending quite a bit of time at any of the  
18 properties?

19 A. Yes.

20 Q. He didn't go out to the properties?

21 A. He went out to them, but not very frequently.  
22 He spent most of his time in the office. Anytime that  
23 there was a meeting with -- a manager's meeting, they  
24 came to the office, to the corporate office.

25 Q. All right. So he didn't get to know the

1 residents?

2 A. No, nobody knew who he was.

3 Q. So the residents didn't even know who

4 Mr. Carpenter was?

5 A. No.

6 Q. What about the people on site, the property

7 managers?

8 A. Oh, the property managers knew who he was  
9 because many of them were either hired by him or someone  
10 in his staff.

11 Q. Okay. Mr. Carpenter wasn't a key -- was he key  
12 to stay with Southwest Housing for the transition --  
13 transaction to occur with Cascade?

14 A. He was key in continuing to get his paycheck.  
15 So part of him continuing to work there was important, if  
16 he wanted to work there.

17 Q. But he wasn't a key player to the transaction?

18 A. Brian -- Brian and Cheryl Potashnik are the --  
19 were the key -- were the key to Southwest Housing.

20 Q. And, in fact, Cascade Affordable Housing didn't  
21 even hire Mr. Carpenter after this transition, did they?

22 A. I'm not aware of them hiring him.

23 MR. DONOHUE: I'll pass the witness.

24 THE COURT: Ms. Gibson?

25 RECROSS EXAMINATION

1 BY MS. GIBSON:

2 Q. Mr. Jones, during your employment, did Brian  
3 Potashnik ever talk with you about not sharing salary  
4 information, compensation information with other  
5 employees?

6 A. Nobody tells an employee not to talk about their  
7 salary. That's just one of those common sense things  
8 that we do.

9 Q. Okay. As far as you're concerned, Mr. Jones,  
10 the only key people in connection with the asset sale  
11 were Brian Potashnik and Cheryl Potashnik, correct?

12 A. In my opinion, yes.

13 Q. Okay. Beneath Brian Potashnik and Cheryl  
14 Potashnik, who were the next level, key people -- while  
15 recognizing that everyone down to the -- to every level,  
16 you know, needs to be there.

17 A. Right.

18 Q. But beneath Brian and Cheryl, who would you say  
19 were some of the more important players?

20 A. Well, at the point of somebody selling something  
21 that they own, only the owners are important.

22 Q. Only the owners?

23 A. Absolutely.

24 Q. Okay.

25 MS. GIBSON: Pass the witness.

1 THE COURT: Mr. Donohue?

2 MR. DONOHUE: No further questions.

3 THE COURT: Thank you, Mr. Jones. You're  
4 free to leave the courthouse.

5 THE WITNESS: Thank you.

6 THE COURT: Ms. Gibson, did you want to call  
7 Mr. Cohen?

8 MS. GIBSON: I'm sorry. Oh, yes, Your  
9 Honor. Plaintiff calls Paul Cohen.

10 THE COURT: All right. Go out and get him.

11 MR. FRIEDMAN: What's the name of the next  
12 witness?

13 THE COURT: Paul Cohen.

14 MR. FRIEDMAN: Thank you.

15 THE COURT: What's that?

16 MR. FRIEDMAN: I said, thank you.

17 THE COURT: Oh, you're welcome.

18 Mr. Cohen, if you come all the way back here  
19 (pointing). Mr. Cohen, you may have been sworn in  
20 before, but I'm going to swear you in again so the jury  
21 sees that you're sworn in. Raise your right hand.

22 (Witness sworn.)

23 THE COURT: Have a seat. And Ms. Gibson  
24 will ask you questions first.

25 PAUL COHEN,

1 having been first duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. GIBSON:

4 Q. Mr. Cohen --

5 MR. FRIEDMAN: We're now back on the  
6 plaintiff's witnesses?

7 THE COURT: Yes.

8 Q. (By Ms. Gibson) Mr. Cohen, I'll be short.

9 I've talked to you twice, correct?

10 A. I believe that's correct.

11 Q. Okay. And the first time that I talked -- and I  
12 know things change between the two conversations and I'll  
13 address both, just so you know. But the first time that  
14 I talked to you, you had -- you had said that you  
15 remember being on some type of Lear jet with Jeff  
16 Carpenter and Brian Potashnik and somebody else that --  
17 not Aaron?

18 MR. FRIEDMAN: Your Honor --

19 Q. (By Ms. Gibson) Do you recall that?

20 MR. FRIEDMAN: -- these questions are  
21 leading.

22 THE COURT: Overruled.

23 Q. (By Ms. Gibson) Do you recall that?

24 A. I recall us having a conversation. You asked  
25 me, did I recall being on the jet with Brian going to Las

1 Vegas -- that we were going to go to Las Vegas and you  
2 said that Jeff was on the plane and he was going to work  
3 in Las Vegas. What else did you ask me? You asked me --  
4 you said, Don't you remember the conversation, where you  
5 said welcome to the millionaire's club. I said, I don't  
6 remember that conversation.

7 And, you know, as I think about it, I can  
8 put -- I've been on several planes with Brian. Brian is  
9 a friend of mine. We used to go to Las Vegas a couple of  
10 times. We went with -- a couple different -- a couple of  
11 different times. So I -- it's hard for me -- since  
12 you're asking me something that occurred so long ago,  
13 which specific trip it was. I mean, there was people on  
14 the plane.

15 The only thing I can tell you for sure, is I  
16 was on the plane, Brian Potashnik was on the plane. And  
17 one of the trips, another friend of ours, [MD Wyatt] was  
18 on the plane, [Mitch farmberg] was on the plane. I don't  
19 know if it was the same -- it was several different  
20 trips. I cannot tell you other than those four people --  
21 oh, a guy named Kyle on was on the plane. Other than  
22 those specific people, even with your cajoling, I don't  
23 remember. I cannot tell you with certainty who else was  
24 on that plane.

25 Q. Right.

1                   And that's -- that's the second time -- you  
2 talked to me about that the second time that I talked to  
3 you. But the first time, you recall that you said, you  
4 know, I don't remember the congratulations, but I do  
5 remember us being on the plane and Brian was talking  
6 about the asset sale and the money that everyone was  
7 going to make --

8           A. I wouldn't characterize that conversation that  
9 way.

10          Q. What?

11          A. I would not characterize our conversation that  
12 way. You had asked me, says -- come on, you remember,  
13 you remember.

14          Q. I --

15          A. Brian -- you said to Jeff, welcome to the  
16 millionaire's club and you were pushing me to say I  
17 remember it. And I'm like, look, ten years ago, I can't  
18 remember specific dates, places or conversations.

19          Q. Mr. Cohen, you recall that I told you that that  
20 was okay that you didn't remember it.

21          A. Yes, I do remember that.

22          Q. I never said, come on, you remember.

23          A. That I specifically remember.

24          Q. I never said, come on, you remember, come on,  
25 you remember.



1 A. That's how I remember you --

2 Q. I was just checking on whether you did and told  
3 you it was okay if you didn't, correct?

4 A. No. I pretty much remember the way it was.  
5 That's what I remember. You asked me the question --

6 Q. And later you called me and said, I just want  
7 you to know, I've thought about it some more and I  
8 don't -- I don't think now I can place Jeff on the plane;  
9 do you remember that?

10 A. In our second conversation, I said, I cannot  
11 place anyone on the plane, but the individuals I  
12 mentioned to you previously. That I didn't want to get  
13 pressed into a situation where I was testifying, yeah, I  
14 remember him on the plane or don't remember him on the  
15 plane because that wouldn't be accurate.

16 Q. And the first time I talked to you, you asked me  
17 can you -- because I wasn't telling you much about the  
18 case, you said, can you at least tell me did Jeff get  
19 stiffed or he -- did he just get less than -- you know,  
20 less than the full amount.

21 Do you remember asking me that question?

22 A. I remember asking you what the case was about  
23 and whether or not -- when we talked about it. And I  
24 said, so -- and I did, I asked -- I said so did he -- I  
25 didn't know the details of -- of his employment, when he

1 left, stayed. I mean, that's --

2 Q. Sure.

3 A. I'm friends with people, I don't get into their  
4 business. And I did ask you, I asked you, like, what's  
5 this case about. What happened and -- that would be  
6 somewhat accurate I don't know if I would use those exact  
7 words --

8 Q. And when -- and when I wasn't saying a whole lot  
9 because you're a witness, you asked me, can you at least  
10 tell me did Jeff get stiffed or did he just get less.

11 Do you recall that?

12 A. Something to that effect.

13 Q. Okay.

14 A. Yeah.

15 Q. And do you recall without me asking you  
16 anything, you said, man, Jeff was integral to that sale  
17 or something like that?

18 A. No.

19 Q. Do you recall in the second time you called me,  
20 when you said, you know, I thought about it and now I'm  
21 going to tell you I'm not going to be able to place Jeff  
22 on the plane. And in the second phone call you said, I  
23 shouldn't have -- I shouldn't have said integral. And  
24 I'm sorry. I can't say that word for some reason,  
25 integral (pronunciation).

1 A. I know what you mean.

2 Q. I should have just said everybody's important.

3 Do you recall that?

4 A. I remember telling you that everybody's  
5 important. You asked me specifically, can you say -- you  
6 said can you say that Jeff was important to the company  
7 and I think I replied, like, well, everybody's important  
8 to the company, at least in my experience.

9 Q. All right. But one other thing that you said in  
10 the second conversation is you said, I thought about it,  
11 and I shouldn't have -- I shouldn't have said integral.

12 Do you recall that in the second  
13 conversation?

14 A. No. I remember in the second conversation  
15 saying I thought about it and I don't want to get stuck  
16 in placing specific people on the -- on the plane.

17 Q. Between the time -- and you were very good  
18 friends with Brian Potashnik?

19 A. Yes.

20 Q. And you still are today?

21 A. Well, I haven't seen him in about five years  
22 until I walked into the court.

23 Q. Well --

24 A. It's a heck of a place to reconnect, I think.  
25 But we were very friendly. Brian's a -- yeah, I've known

1 Brian and Cheryl for a long time and they're good people.

2 Q. And -- and --

3 A. By the way, I've known Jeff for at least -- when  
4 he started working there for a number of years, seemed  
5 like a nice guy too.

6 Q. Do you remember asking me --

7 MS. GIBSON: Strike that.

8 Q. (By Ms. Gibson) Between the time -- the first  
9 time that I talked to you and the second time, did you  
10 talk with Cheryl Potashnik, Brian Potashnik or any of  
11 their attorneys or anyone affiliated with their defense  
12 in this case?

13 A. Between the first two conversations?

14 Q. Yes.

15 A. No.

16 MS. GIBSON: Pass the witness.

17 THE COURT: Mr. -- who's witness?

18 Mr. Donohue?

19 MR. DONOHUE: Yes.

20 CROSS-EXAMINATION

21 BY MR. DONOHUE:

22 Q. Mr. Cohen, would you say that Ms. Gibson was  
23 trying to get you to say something that didn't happen or  
24 you didn't remember?

25 A. I wouldn't characterize it that way. I think

1 she was trying to joggle my memory by saying, don't you  
2 remember this conversation, don't you remember that  
3 conversation.

4 Q. So when you tell her that you don't recall that  
5 and then you even told her you don't remember if Jeff was  
6 on the plane or not, she kept egging you on that -- don't  
7 you remember, that this is what was said about, welcome  
8 to the millionaire's club or something to that effect?

9 A. I think she was advocating her client's point.  
10 And she did ask me, like, don't you remember the  
11 conversation, don't you -- welcome -- something like  
12 that, welcome to the millionaire's club.

13 Q. So you were clear with her that you didn't  
14 remember any of that, couldn't remember if her client was  
15 on the plane?

16 MS. GIBSON: Object. Misstates his  
17 testimony.

18 Q. (By Mr. Donohue) And she subpoenaed you here  
19 anyway --

20 THE COURT: Mr. Donohue, she has an  
21 objection, you got to respond --

22 MS. GIBSON: That's okay. I'll withdraw it.  
23 Keep going.

24 THE COURT: Okay. Go ahead.

25 THE WITNESS: Okay. Go ahead.

1 Q. (By Mr. Donohue) Yeah.

2 Again, you told Ms. Gibson that you didn't  
3 remember any of that, didn't even remember if her client  
4 was on the plane and she subpoenaed you here after she  
5 asked you several times, did you remember this and you  
6 told her initially you don't recall that at all, right?

7 A. That's correct.

8 MR. DONOHUE: I'll pass the witness.

9 THE COURT: Ms. Gibson?

10 REDIRECT EXAMINATION

11 BY MS. GIBSON:

12 Q. Mr. Cohen, do you recall that I told you it was  
13 perfectly fine if you didn't remember?

14 A. Yes.

15 Q. And I was just going to give you some details to  
16 try and jog your memory, if that worked, correct?

17 A. You -- I answered yes, to the first part. The  
18 second part of the question was -- is where -- we were  
19 having conversation then --

20 Q. Right. And so --

21 A. -- I -- suggested, don't you remember this,  
22 don't you remember that. I said, no.

23 Q. For example, I said, Do you remember the private  
24 jet and you said --

25 A. Yes.

1 Q. -- was it a Lear jet, you know, some number.

2 Is that type of conversation, right?

3 A. Yeah. You asked me if --

4 Q. Okay.

5 A. -- we on a private jet.

6 Q. And it wasn't --

7 A. You asked me my conversation with Jeff the night  
8 before my supposed deposition, when he asked him,  
9 remember it was a Citation X and that was the only thing  
10 I remember was, no, it was a Lear jet because I remember  
11 Brian asking the pilot to do what's called an executive  
12 take off. A lot of us don't fly those planes very often.  
13 So that -- the only thing I do remember is specifically  
14 was the type of jet, we took off.

15 Q. But it was -- you were calling in the second  
16 conversation to let me know that you had thought about  
17 some things and you had -- and you had changed your mind  
18 on a couple of -- on a couple of things --

19 A. I don't think I changed my mind. I think I  
20 called you to clarify things to say, hey, if you're  
21 expecting me to put specifically on a trip, me and Brian  
22 and Jeff together, that I couldn't do that. That was the  
23 context of the second conversation.

24 Q. Right. And so one part of the second  
25 conversation --

1           A.    And I'm not saying he wasn't there, I'm just  
2   telling you ten years ago, you know, --

3           Q.    Right.

4           A.    -- I remember, you know, Brian and Aaron and  
5   those guys.

6           Q.    Right.

7                        So in the first conversation you thought he  
8   was and then later you said I thought about it --

9           A.    Well, in the first conversation you were telling  
10   me he was.

11          Q.    Well, you -- at that point you said --

12          A.    I didn't -- I didn't affirmatively say he wasn't  
13   because it was -- you know, I get the subpoena, I called  
14   down to see what's going on and that's when we had the  
15   conversation.

16                       MS. GIBSON:   Pass the witness.

17                       THE COURT:    Mr. Donohue?

18                       MR. DONOHUE:   No further questions.

19                       THE COURT:    All right.   Thank you,  
20   Mr. Cohen.   You're free -- you're released from your  
21   subpoena and you're free to leave the courthouse.

22                       THE WITNESS:   Thank you.

23                       THE COURT:    Let me see you-all over here.

24                       (Discussion off the record.)

25                       THE COURT:    Ladies and gentlemen, we'll take



1 our lunch break in just a moment and we'll take an hour  
2 and ten minutes for lunch. I do want to remind you of  
3 our schedule. I mentioned this on the first day, but it  
4 may not have sunk in that we're in trial Monday through  
5 Thursday. We're not on trial on Fridays. So after  
6 today, we won't see you again until -- until Monday  
7 morning. And we'll go up until near the 5 o'clock hour  
8 today. So we'll see you back after lunch, which would be  
9 in an hour and ten minutes or about at 1 o'clock.

10 MR. FRIEDMAN: Judge, if they want to come  
11 and watch you tomorrow.

12 THE COURT: You sure can. You are welcome  
13 to come here and watch the hearings and the other cases.

14 THE BAILIFF: All rise.

15 (Jury is ushered out.)

16 (Break taken.)

17 THE BAILIFF: All rise.

18 (Jury ushered in.)

19 THE COURT: Everybody have a seat, please.

20 Welcome back. Good afternoon, ladies and  
21 gentlemen. We'll continue with the trial. We'll go  
22 about an hour and ten minutes or so. We'll go till about  
23 2:15 before we take a break. But, of course, if you need  
24 a break before then, let us know.

25 We'll ask, Ms. Gibson, to call her next

1 witness.

2 MS. GIBSON: Jeff Carpenter calls Vikki  
3 Carpenter.

4 THE COURT: Ms. Carpenter -- Ms. Carpenter,  
5 if you will come up here, ma'am. Before you step up on  
6 those stairs, I'm going to swear you in.

7 (Witness sworn.)

8 THE COURT: Have a seat right here and talk  
9 into the microphone and Ms. Gibson will ask you questions  
10 first.

11 **VIKKI CARPENTER,**  
12 having been first duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. GIBSON:

15 Q. Can you tell the jury your full name.

16 A. Vikki L. Carpenter.

17 Q. And you're Jeff Carpenter's wife?

18 A. Yes.

19 Q. Did Jeff Carpenter ever tell you anything about  
20 bonuses in connection with his work for the Potashniks?

21 A. Yes.

22 Q. What did he tell you?

23 A. That he was expecting a yearly bonus based upon  
24 his performance with the companies.

25 Q. And with respect to the -- the -- any -- any

1 bonus out of the asset sale, did he tell you about that?

2 A. Yes. He was very excited because he was  
3 expecting to get 3 percent based off the sale of the  
4 assets.

5 Q. And you -- you didn't know the full formula?

6 A. No.

7 Q. Okay. Just the 3 percent?

8 A. Just 3 percent.

9 Q. Okay. And did you have an understanding of what  
10 that had been estimated to be before the asset sale  
11 happened?

12 A. Approximately \$1,000,000.

13 Q. And did you and Jeff Carpenter discuss anything  
14 about any past due annual bonuses?

15 A. Yes. Being that he hadn't been paid any bonuses  
16 from the time that he had started with the company.

17 Q. Okay. Did he tell you anything else about that?

18 A. I'm not sure what you mean.

19 Q. I mean, is that the extent of the conversation?

20 A. Yes. As far as I know that's where -- just that  
21 he hadn't been paid any of his bonuses.

22 Q. And did you have -- during Jeff Carpenter's  
23 tenure working for the Potashniks, did you have any  
24 conversations with Cheryl Potashnik about Jeff?

25 A. On a couple of occasions, we had met at the

1 elevator or had been at their home or at Cafe Express and  
2 she expressed how much that they love Jeff and that they  
3 couldn't go without -- work without him, especially after  
4 the FBI had raided the offices and they needed somebody  
5 to take control.

6 Q. I'm sorry. I couldn't hear the last --

7 A. They needed somebody to take control.

8 Q. Did you and Cheryl talk about anything else  
9 about Jeff?

10 A. Just that.

11 Q. If --

12 A. They just loved him and they thought he was  
13 great to work around and he was really asset to the  
14 company.

15 Q. And did -- before, you know -- for a while, did  
16 Jeff talk to you about feeling -- feelings being mutual  
17 as far as the Potashniks?

18 A. Oh, yes. I think that they enjoyed working with  
19 him as much as he enjoyed working with them.

20 Q. Was Jeff working a lot while he worked for the  
21 Potashniks?

22 A. A lot, yes. A lot of late nights and weekends.

23 Q. Did that cause any issues at home?

24 A. Somewhat, yes, because he just wasn't available.

25 Q. And did -- did his level of work cause some --

1 some yelling fights?

2 A. Yelling fights, yes, some sleeping on the couch  
3 occasionally.

4 Q. Okay. And during this time frame, if you wanted  
5 to spend additional time with your husband, what types of  
6 things would you do?

7 A. Well, I would -- because he was working weekends  
8 so often, we would -- you'd have to go out and look at  
9 properties, check by evenings. So we would drive  
10 properties in the evening to check the lighting. And  
11 during the weekends, we would go around and visit with  
12 the property managers and the staff and see how everybody  
13 was doing and just generally check over the condition of  
14 the property when we were out and about. And we did that  
15 on -- probably at least two weekends a month. So about  
16 half of the time.

17 Q. And did -- did you and Jeff do any volunteer  
18 work in connection with Hurricane Katrina?

19 A. Yes. Jeff was down at the Astrodome and when  
20 they were sending up some of the new residents, I was  
21 going around to every store from Fort Worth to Grapevine  
22 to Garland picking up pillows and blankets and toothpaste  
23 and toothbrushes, towels, any personal items that we  
24 could get, diapers for babies to have there for the  
25 guests when they got there.

1 Q. Did you -- did you do anything else? Were there  
2 any other times that you remember where you spent time  
3 with Jeff on -- in connection with his work similar to  
4 touring properties on weekends, anything else like that?

5 A. I would come into the office and spend some time  
6 with him, occasionally. I'd say maybe once a month. But  
7 he was also so busy that I'd usually just sat -- sit  
8 there and not -- it wasn't as quality of a time as I  
9 would desire.

10 MS. GIBSON: Pass the witness.

11 THE COURT: Mr. Friedman?

12 CROSS-EXAMINATION

13 BY MR. FRIEDMAN:

14 Q. Good afternoon, Ms. Carpenter. My name is Jason  
15 Friedman.

16 How are you today?

17 A. Very well, thank you.

18 Q. And we've never met; is that correct?

19 A. No.

20 Q. And what did you do today to prepare for your  
21 testimony?

22 A. I really didn't have too much preparation for  
23 this testimony.

24 Q. Did you review any documents?

25 A. No.

1 Q. Did you read Mr. Carpenter's deposition?

2 A. No.

3 Q. Did you speak with Ms. Gibson?

4 A. Yes.

5 Q. And how many times did you do that?

6 A. Well, maybe twice.

7 Q. You testified today that Mr. Carpenter told you  
8 he was expecting a yearly bonus; is that correct?

9 A. Yes.

10 Q. And what year did he tell you that?

11 A. From the very beginning when he started with the  
12 company.

13 Q. So his first day on the job?

14 A. So -- so when he got his employment contract, he  
15 was very excited to be working for the company -- for the  
16 company and he was sharing with me what to look forward  
17 to as far as salary, bonuses, et cetera.

18 Q. So would it be accurate to say your testimony  
19 is, he was excited about the possibility to get a bonus?

20 A. More of a probability to get a bonus.

21 Q. Probability?

22 A. Yes.

23 Q. He told you it was a guaranteed bonus?

24 A. He did not say it was a guaranteed bonus, but it  
25 was anticipated that he would have a yearly bonus.

1 Q. Were you aware that Mr. Carpenter received a  
2 bonus in his first year of employment?

3 A. No.

4 Q. He didn't inform you of that?

5 A. No.

6 Q. So in 2005, did Mr. Carpenter tell you he  
7 received a bonus?

8 A. No.

9 Q. Did he tell you he didn't receive one?

10 A. No, there -- we didn't really talk about the  
11 bonus or a bonus in 2005, no.

12 Q. And he never came and complained, I didn't get  
13 my yearly bonus in 2005?

14 A. No.

15 Q. 2004?

16 A. No.

17 Q. 2006?

18 A. No.

19 Q. 2007?

20 A. Yes.

21 Q. And you testified today that Ms. --  
22 Mr. Carpenter told you he was expecting \$1,000,000?

23 A. Yes.

24 Q. And what was that date of that conversation?

25 A. I don't know exactly the date, but I -- it was



1 after he had taken a trip to Las Vegas with the group of  
2 gentlemen, Brian included, and they were going to look at  
3 the property in Vegas. And when he came back he said, It  
4 looks like we're going to be millionaires.

5 Q. So he came home and said, Honey, we're going to  
6 be millionaires?

7 A. Well, not like that. I mean, he was excited  
8 with the -- with the knowledge that he was -- going to be  
9 based on the 3 percent on the sale of the assets.

10 Q. And what else did he tell you about the -- his  
11 formula?

12 A. I don't know what his formula was, but I just  
13 know it was 3 percent of the sale of the properties.

14 Q. Did he tell you what properties?

15 A. I would assume they were all of the properties.

16 Q. And, Ms. Carpenter, you have no firsthand  
17 knowledge of what Mr. Carpenter actually did when he was  
18 at the office; is that correct?

19 A. I had worked for Jeff for years before that, so  
20 I knew what type of work that he did. And I've worked in  
21 property management industries so I know fairly well what  
22 is required of the job and what he did, yes.

23 Q. And did you work with him at Brisben Company?

24 A. Yes.

25 Q. And you -- so you're aware he sued Brisben

1 Company; is that correct?

2 A. Yes.

3 Q. Did you sue Brisben Company?

4 A. No.

5 Q. Ms. Carpenter, in 2007, what was your annual  
6 household budget?

7 A. I didn't really have a budget. It was if we  
8 needed something or wanted something, we pretty much were  
9 able to do it.

10 Q. Just did it?

11 A. Well, that's if we could afford it.

12 Q. Were you aware that Mr. Carpenter states that  
13 your -- your budget at the time was between 300 and  
14 350,000 a year in 2007?

15 A. I thought it was less than that.

16 Q. What did you think it was?

17 A. Around 250.

18 Q. And how did you base that budget? How'd you  
19 come up with that budget?

20 A. Well, I didn't spend every penny of the money  
21 that we made. So some of it went to 401Ks and savings,  
22 so I'm not -- I don't have an idea of what -- the total  
23 amount that was earned, what the split of it was.

24 Q. And part of the budget was for Mr. Carpenter's  
25 legal fees for his other suits, correct?

1 MS. GIBSON: Object. Assumes facts not in  
2 evidence. Object to showing something that hasn't been  
3 admitted.

4 Or has it? Jason, has that been --

5 THE COURT: You can't publish something  
6 until it's admitted into evidence.

7 MR. FRIEDMAN: It's admitted, it's your  
8 document.

9 MS. GIBSON: I know we produced it.

10 MR. FRIEDMAN: May I approach the witness?

11 THE COURT: Sure. Did you put a exhibit  
12 sticker on it?

13 THE WITNESS: It says, Exhibit 1.

14 MR. DONOHUE: The exhibit sticker is  
15 actually at the bottom. It shows what exhibit it is.

16 MR. FRIEDMAN: Defendant's Exhibit 14.

17 MS. GIBSON: Jason if you just -- I just  
18 want to make the record clear, I'm not -- you don't have  
19 to establish a predicate, you can just offer it. I'm not  
20 going to object. I just want to make sure the record is  
21 right.

22 THE COURT: Are you offering this?

23 MR. FRIEDMAN: So, Your Honor, I'm going to  
24 move to offer Defendant's Exhibit No. 14.

25 THE COURT: No objection?

1 14 is admitted.

2 (Defendant's Exhibit No. 14 is admitted.)

3 Q. (By Mr. Friedman) Ms. Carpenter, do you  
4 recognize this document?

5 A. No, I don't.

6 Q. Your -- you see at the top where it says, JC  
7 personal notes to discuss personal financial items with  
8 Ryan?

9 A. Right, I see that.

10 Q. You've never seen this before?

11 A. No, I have not.

12 Q. Your husband in here states -- you see number  
13 three?

14 A. Uh-huh.

15 Q. My personal budget is 300 to 350 per ANN?

16 A. Okay.

17 Q. So you weren't aware of that?

18 A. No.

19 Q. And then above it, he talks about depleting  
20 savings due from the lack of bonus and increased wage  
21 dollars --

22 A. Okay.

23 Q. -- that I needed to pay my personal lawsuit  
24 expense.

25 Are you aware of that lawsuit?

1 A. No, not really, I wasn't.

2 Q. You weren't aware of it?

3 A. No. I mean, I know there was a lawsuit, but I  
4 didn't know that it came out of this.

5 Q. Not this lawsuit. I'm just talking about a  
6 different one.

7 A. Okay. I'm sorry. No, I don't.

8 Q. You're not aware of it?

9 A. No. Well, wait a minute. Are you -- you're  
10 talking about Brisben?

11 Q. Was that going on in 2007?

12 A. I believe it had ended previous to that, yes.

13 Q. So you're not sure what other lawsuit he would  
14 have been referring to?

15 A. No.

16 Q. Has Mr. Carpenter had any employment that you  
17 know of that he made more money than he made under his  
18 written employment agreement with Southwest Housing  
19 Management?

20 A. I think when he moved on to AHF, he was making  
21 more money.

22 Q. How much was he making there?

23 A. I want to say probably 350 to 400.

24 Q. And how long did he work there?

25 A. Until Mr. Sterquell passed. So I think that was

1 about a year, a year and a half. I'm not sure of the  
2 dates.

3 Q. So do you know why he left?

4 A. Because the company was being dissolved and --  
5 after Steve's death.

6 Q. And are you aware of where he was employed after  
7 that?

8 MS. GIBSON: Object. Relevance.

9 THE COURT: What's the relevance?

10 MR. FRIEDMAN: Just his financial condition.

11 THE COURT: You're asking after this? After  
12 the Southwest --

13 MS. GIBSON: He's asking after the first  
14 employment after.

15 THE COURT: After he worked at Southwest?

16 MS. GIBSON: Right.

17 THE COURT: Okay. Sustained.

18 Q. (Mr. Friedman) Ms. Carpenter, do you know the  
19 names of the other employers Mr. Carpenter has sued?

20 A. I know --

21 MS. GIBSON: Object. Relevance.

22 THE COURT: What's the relevance?

23 MR. FRIEDMAN: I'm trying to determine if --

24 THE COURT: Well, there's -- who they were  
25 and what the nature was are not relevant. If that's

1 where his money is going, that's where his money is  
2 going.

3 MR. FRIEDMAN: Well, it's the state of mind  
4 at the time.

5 THE COURT: Objection's sustained.

6 Q. (By Mr. Friedman) Ms. Carpenter, did  
7 Mr. Carpenter tell you that he got paid six weeks  
8 severance from Southwest Housing Management?

9 A. No.

10 Q. Did he tell you that he turned down \$150,000  
11 severance --

12 A. No.

13 Q. -- at Southwest Housing Management?

14 A. No.

15 Q. He didn't tell you that?

16 A. No.

17 Q. Are you familiar with his employment agreement?

18 A. No, not -- not well.

19 Q. So he didn't tell you that any changes to his  
20 employment agreement had to be in writing?

21 A. No.

22 Q. Did he tell you that he attempted to amend his  
23 employment agreement in writing?

24 A. I'm sorry. I don't understand the question.

25 Q. Did Mr. Carpenter talk to you about or tell you

1 that he's going to submit a proposed amendment to his  
2 employment agreement to Brian or Cheryl Potashnik?

3 A. No, I think he already had an agreement.

4 Q. So would you be surprised that after he told you  
5 that, he was trying to get them to sign an agreement?

6 A. I would be surprised that he was trying to get  
7 them to sign an agreement about that, yes.

8 Q. Would you be surprised to know that he secretly  
9 recorded them, trying to get them to agree to a  
10 agreement?

11 A. I would not be surprised, no. I suggested that  
12 it might be a good idea.

13 Q. So you suggested it?

14 A. Yes.

15 Q. And what was your extent of your discussions  
16 about the secret recording?

17 A. Just that I thought it might be a good idea for  
18 him to have Brian and Cheryl's voices confirming that  
19 they had made a deal.

20 Q. And before he went about doing the recording,  
21 did y'all discuss maybe bringing up the deal on the  
22 recordings since he would be the only one to know --

23 A. No, I think it was more about his bonuses  
24 than -- than the deal. Maybe I didn't word that  
25 properly.



1 Q. So the point of the recording was he was trying  
2 to record them to discuss his employment bonuses under  
3 his contract?

4 A. Yeah.

5 Q. Thank you, Ms. Carpenter, for your time.

6 MR. FRIEDMAN: I'll pass the witness.

7 THE COURT: Thank you, Mr. Friedman.

8 Ms. Gibson?

9 REDIRECT EXAMINATION

10 BY MS. GIBSON:

11 Q. Ms. Carpenter, you were referring to a deal just  
12 a moment ago, talking to -- or the deal.

13 Can you -- could you just explain what you  
14 meant by that?

15 A. As far as, what, the recording or --

16 Q. I just -- I just didn't -- I just want to  
17 understand what you -- you talked about employment --  
18 certain employment bonuses that were still owed?

19 A. Right.

20 Q. And you also referenced "the deal" and I just --  
21 I just need some help understanding what you meant by  
22 "the deal."

23 A. The 3-percent bonus that he was to receive  
24 for -- after the sale of the company.

25 MS. GIBSON: Pass the witness.

1 THE COURT: Mr. Friedman?

2 RECROSS EXAMINATION

3 BY MR. FRIEDMAN:

4 Q. Ms. Carpenter, did you listen to the  
5 recordings --

6 A. No.

7 Q. -- after?

8 A. No.

9 Q. Did you read the transcripts after?

10 A. No.

11 Q. Were you the one who typed out the transcripts?

12 A. No.

13 Q. Do you know who that was?

14 A. My daughter.

15 Q. So would you agree with me that up until the  
16 time of the recording, you would agree with me, there was  
17 no confirmation of any kind that Jeff Carpenter had a  
18 deal?

19 A. I believe that there was because they said that  
20 there was.

21 Q. And you had no firsthand knowledge about the  
22 deal; is that correct?

23 A. Other than what I had heard from my husband, no.

24 Q. You didn't hear anything from Brian or Cheryl  
25 Potashnik, correct?

1 A. Other than they loved him.

2 Q. And, Ms. Carpenter, what did Brian say to you  
3 when he came back and said neither Brian nor Cheryl  
4 confirmed any agreement?

5 A. What -- I never talked to Brian. I never that  
6 had a conversation --

7 Q. I meant Jeff?

8 A. What did I say to Jeff? I couldn't believe it.  
9 Because I always thought that Brian was a man of his word  
10 and --

11 Q. And he --

12 A. -- that --

13 Q. -- did he give you his word? Brian gave you his  
14 word?

15 A. No, I did not talk to Brian. But I'm saying  
16 when you -- said to Jeff, did Jeff say to me -- that's  
17 why I couldn't believe that -- that the deal didn't go --  
18 or we weren't going to get the -- the payout from the  
19 sale of the properties.

20 Q. And if Mr. Carpenter got the payout, do you  
21 think he would have told you?

22 A. Oh, yeah.

23 MR. FRIEDMAN: Pass the witness.

24 THE COURT: Ms. Gibson?

25 MS. GIBSON: Pass the witness.

1 THE COURT: All right. Thank you,  
2 Ms. Carpenter. If you'll have a seat back over there  
3 with Mr. Carpenter.

4 Ms. Gibson, it's still your case.

5 MS. GIBSON: I'm sorry?

6 THE COURT: It's still your -- if you'll  
7 call your next witness, please.

8 MS. GIBSON: Okay. Plaintiff calls Jeff  
9 Carpenter.

10 THE COURT: Mr. Carpenter, if you'd come up  
11 here, sir. Before you step up there, let me swear you  
12 in.

13 THE WITNESS: Yes, sir.

14 (Witness sworn.)

15 THE COURT: Have a seat right here,  
16 Ms. Gibson will ask you questions first.

17 And we're still going to about 45 minutes  
18 before we take a break.

19 JEFFREY CARPENTER,  
20 having been first duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MS. GIBSON:

23 Q. Would you please tell the jury your full name.

24 A. Jeffrey Wayne Carpenter.

25 Q. And, Mr. Carpenter, to clear something up, can

1 you -- can you take a look at Exhibit 1 in front of you.

2 A. Yes, ma'am.

3 Q. It's in the tall -- it should be on top of the  
4 tall stack.

5 A. It's right here.

6 Q. Well -- so I think -- I think that exhibit, it  
7 has an Exhibit 1 sticker right here (pointing), but this  
8 is actually Defendant's 14?

9 A. It's -- oh, I see.

10 Q. Okay. So if you'll just look right beside it.

11 A. Here (pointing)?

12 Q. You see Exhibit 1?

13 A. Exhibit 1, yes.

14 Q. Okay. You have seen the transcript that your  
15 daughter typed?

16 A. Yes, ma'am.

17 Q. Okay. Is Exhibit 1 the -- the transcript that  
18 your daughter typed?

19 A. Yes, ma'am. Wait a minute. No, this is -- is  
20 not the one that my daughter typed.

21 Q. Okay.

22 A. This is where we had a -- a third-party  
23 professional type so there would be no conflict of --  
24 excuse me -- any conflict of any interest.

25 Q. How did -- how does -- how is it that you came

1 to work for the Potashniks?

2 A. Very interesting. I was ready to make a move  
3 from the company I was with. I just came back from a job  
4 interview that -- and I received a phone call from Deepak  
5 Suilakhe, who worked for this Brian and Cheryl as -- in  
6 development. And we had a telephone conversation and it  
7 probably lasted 30 minutes and he gave me a rundown on  
8 the Potashniks and Southwest Housing and it was  
9 intriguing.

10 Q. And how did you feel about Brian Potashnik and  
11 Cheryl Potashnik when you started working there and  
12 decided to go work there?

13 A. Well, I was very excited. We relocated from Las  
14 Vegas to Dallas. One of the hardest parts at that time  
15 was housing. But I was very excited about the challenge.  
16 The company was growing very rapidly. It needed  
17 professional guidance, you know, help, my expertise is in  
18 the management area. And the company grew from an  
19 entrepreneurial company, from deal to deal to deal, next  
20 thing you know you got a very large company.

21 And, I believe, when I came on board, they  
22 had 25 apartment communities and that took them from  
23 about 5500 units -- and one year later, due to the  
24 efforts of the development doing their job and  
25 construction doing their job, they delivered another 13

1 properties and brought the total count to 8,000 units.  
2 So in a one-year time period with me coming on board,  
3 needing to make modifications to the management  
4 operations, we had a very large assortment amount of  
5 growth at that time.

6 Q. And you're -- what -- can you briefly describe  
7 what your job was at Southwest Housing?

8 A. Yes. It was -- it was to run the day-to-day  
9 operations of the management company, which entailed the  
10 related -- correlated to the site -- the different  
11 apartment communities. As a management company, there's  
12 a lot of pieces to a management company because of  
13 being -- excuse me -- tax credit, there's a lot of  
14 federal regulations and a lot of different missing --  
15 different other pieces. As well as with the growing  
16 company. I was asked to help facilitate some  
17 institutional, if you will, cohesiveness in the corporate  
18 office as well, in the central servicing site because  
19 they didn't have that running smoothly.

20 Q. And what is central services?

21 A. Central services typically would be I -- IT  
22 department, HR, it could be asset -- asset management,  
23 you can consider it to be -- some decide -- say it's  
24 accounting, some keep accounting separate. But it was  
25 additional services, payroll. But those type of

1 expertise, specific tasks, that are needed for an  
2 organization.

3 Q. Okay. And when you -- will you take a look at  
4 Exhibit 2, your initialed employment agreement?

5 A. Yes, ma'am.

6 Q. You see -- would you go to Paragraph 4(b).

7 A. Yes, ma'am.

8 Q. You see that the bonus potential in year one is  
9 based on achieving company objectives?

10 A. Yes, I see that.

11 Q. And you should be able to see it, Jeff, on your  
12 screen up there.

13 A. Yeah -- oh, I didn't realize it. Pardon me.  
14 Yes.

15 Q. And company was -- who was the company in this  
16 agreement?

17 A. Southwest Housing Management.

18 Q. And then --

19 A. -- Corp. Inc.

20 Q. -- and then in the other end of -- of the first  
21 year bonus is based on overall profitability of the  
22 organization as a whole?

23 A. Yes.

24 Q. And what -- what does -- what does "organization  
25 as a whole" refer to?



1           A.    Well, it was my understanding and from the very  
2   first dialogue was the company is an owner -- owner,  
3   developer, contractor and manager of apartment industry,  
4   full service, if you will.  So it embraces all those  
5   elements, those companies together, as a whole, for the  
6   success of the organization.

7           Q.    And did you and Brian Potashnik talk about  
8   where -- where he wanted you to be on regular  
9   compensation each year?

10          A.    Yes, he wanted me -- and I expressed that I  
11   wanted to be where I left when I left Brisben Companies  
12   shortly before at -- so starting.  We were a much larger  
13   company, but I wanted -- I was excited about the  
14   companies because with the information, the due  
15   diligence, financial records of the previous year and the  
16   growth pattern, what was in their pipeline of growth, it  
17   excited me, it gave me an -- it gives the company an  
18   opportunity to grow as well as earn more money.  I did  
19   not go to work there for \$200,000 salary.  I did not  
20   necessarily go there for 200,000 maximum bonus.  I went  
21   there to create wealth and that was very well known.

22          Q.    Okay.  And what do you mean by that?

23          A.    It -- to -- where -- I knew what it took or  
24   would take for performance from what I saw.  It was  
25   not -- you know, bewitched-type thing, you know, you

1 wiggle your nose and it's fixed. It was going to be a  
2 long process. And with that, there should -- there would  
3 be rewards for that and the overall organization -- as  
4 long as they -- we continued the growth program, there  
5 would be substantial profitability in the companies.

6 Q. Okay. So you're talking about wealth for the  
7 organization?

8 A. Yes.

9 Q. Okay. And did Brian --

10 A. Not -- excuse me. Not the management company.

11 Q. Right.

12 A. Okay.

13 Q. I -- right.

14 Did Brian Potashnik tell you a number of the  
15 range he expected you to be in on your regular annual  
16 compensation?

17 A. On my annual compensation?

18 Q. I'm sorry. I should clarify.

19 I'm talking about before you start -- when  
20 you're talking to Brian Potashnik, before you started  
21 work at Southwest Housing Management, did he -- did he  
22 discuss his expectations for where you would be on annual  
23 salary and bonus, combined?

24 A. Yes. We discussed it. We discussed it. Based  
25 it off of my previous employer, where I was making

1 200,000 salary a year and \$200,000 bonus was my average.

2 Q. Okay. And--

3 A. So that was a starting point. This was a  
4 smaller organization, but it had plenty of needs of -- of  
5 a turnaround and there was a tremendous amount of growth  
6 happening, so it needed that. So that was a starting  
7 point.

8 MR. FRIEDMAN: I'm going to object as being  
9 nonresponsive.

10 THE COURT: Try and limit your responses to  
11 the question that's asked. And I'm not sure whether that  
12 was or not.

13 Q. (By Ms. Gibson) And when -- when the agreement  
14 says based on achieving company objectives, did anyone at  
15 Southwest Housing ever give you specific objectives that  
16 you needed to meet?

17 A. No, ma'am.

18 Q. Okay. Did Brian Potashnik or Cheryl Potashnik  
19 ever tell you, though, that you were not meeting their  
20 expectations?

21 A. Never.

22 Q. Throughout the course of your tenure at  
23 Southwest Housing, did Brian Potashnik and Cheryl  
24 Potashnik ever tell you that you were meeting their  
25 expectations?

1 A. Yes. They were pleased -- pleased with the  
2 work. We had some challenges on several different --

3 MR. FRIEDMAN: I'm going to object to  
4 everything after "yes" as being nonresponsive, Your  
5 Honor.

6 Q. (By Ms. Gibson) Can you give me a few examples?

7 MS. GIBSON: Oh, I'm sorry. I didn't --

8 THE COURT: Go ahead.

9 Q. (By Ms. Gibson) Can you give me a few examples?

10 A. There was a couple of apartment -- several  
11 apartment communities that were challenging that needed  
12 extra attention, which we gave and needed -- they -- they  
13 were challenging for many reasons. One, maybe they  
14 should have never been built. They -- was a bad  
15 locations, there was a bad structure --

16 Q. But --

17 A. -- of the deal or whatever. But we worked  
18 collaboratively. We worked and developed a plan to turn  
19 those apartment communities around --

20 Q. My -- I'm sorry. I --

21 MR. FRIEDMAN: I'm going to object to the  
22 last answer as being nonresponsive.

23 Q. (By Ms. Gibson) I gave -- I asked -- I asked a  
24 bad question, Mr. Carpenter.

25 A. Okay.

1           Q.    When I was saying can you give us a few  
2   examples, you had said -- I was talking about Brian  
3   Potashnik and Cheryl Potashnik telling you at various  
4   points that you were meeting expectations. And I'm  
5   sorry, I didn't mean examples of what they were happy  
6   about. I meant, can you give examples of the types of  
7   things they said to you.

8           A.    Oh, we appreciate all the hard work that you --  
9   you do, we know that you go above and beyond, you work  
10  exceptionally hard and we know that it's a hard -- hard  
11  job --

12          Q.    And --

13          A.    -- early on.

14          Q.    -- why was it important that -- to you that the  
15  first-year bonus, the high end, was based on overall  
16  profitability of the organization as a whole?

17          A.    Well, part of my due diligence was -- they  
18  shared with me their development lists, their financial  
19  statements on all the apartment -- or all of the  
20  entities, development, management, construction. And the  
21  management company, given the infancy of that and given  
22  the growth there was -- it was literally impossible for  
23  that -- for the management company to make money. It  
24  would lose money. So therefore the construction company  
25  was profitable. Development company was profitable.

1 Thus looking at the business as a one-company-type  
2 business.

3 Q. And so with respect to Southwest Housing  
4 Management, you -- and profitability, can you give me one  
5 example of why it was not -- it was not possible or  
6 intended to be profitable?

7 A. Well, you have to develop an infrastructure to  
8 be able to manage the properties that were in existence  
9 and the properties that were coming on board. In that  
10 short period of time, it was a 52 percent increase, going  
11 from 5 to 8,000 -- 5500 to 8,000 units, 2500. Great job  
12 by construction, great job by development. Massive  
13 issues for management to -- to absorb all that.  
14 Particularly when you don't have the infrastructure and  
15 the right people in place. So that's only part of it.

16 But -- so we had -- you had to -- we had to  
17 put the infrastructure in place. We had to change some  
18 people. But at the same time we weren't collecting any  
19 fees.

20 Q. Okay. So that would be a second example.

21 Can you -- can you give us one example of  
22 how taking something -- well, let me back up.

23 Did you ever take contracted vender work  
24 in-house at Southwest Housing?

25 A. Yes, we did.

1 Q. Okay. Can you give us one example of how that  
2 impacts profitability of Southwest Housing Management  
3 versus the organization as a whole, including the  
4 individual --

5 A. Yeah I --

6 Q. -- properties?

7 A. -- have a great example that it was done fairly  
8 shortly. The product that Brian and Cheryl, the  
9 companies were building were absolutely gorgeous. The  
10 sign company they were using at the time did granite  
11 signage. It looked good. However, it wasn't lasting,  
12 nor the signage did not have the word "apartments" on it.

13 So here we're in a condo-driven market, in  
14 Texas. So you look at our apartment communities, they  
15 kind of look like condos. You don't know if they're  
16 condos, you don't know if they're apartments. So -- and  
17 there was fault -- they were faulty workmanship. So I  
18 found a vender that was able to deliver a better  
19 product -- a much better product, deliverable and savings  
20 on that paid for my marketing director. So here we were  
21 contracting out -- prior to me coming on board, they were  
22 contracting out with the marketing consultant for  
23 advertising and PR and so forth and I was able to bring  
24 that in-house, essentially free, just by the savings that  
25 we were making on development signage, you know, the main

1 ID signage.

2 Q. Okay.

3 A. Does that make sense?

4 Q. Sure.

5 And can you give us one example of where  
6 taking some service for the organization in-house,  
7 meaning done at Southwest Housing Management, would hurt  
8 Southwest Housing Management financially, but still  
9 ultimately, financially benefit the Potashniks?

10 A. I have to apologize. I'm not sure I understand  
11 the question.

12 Q. That's okay. You get to tell me when I ask bad  
13 questions okay, Jeff.

14 Social services, was that in-house or  
15 contracted when you started?

16 A. It was -- social services was being done by a  
17 third party, contracted. I believe in -- please don't  
18 hold me to the letter of law, but I believe Cheryl was  
19 involved in helping start the nonprofit that provided  
20 these social programs that we provided to our residents  
21 at the particular properties. And what was happening was  
22 they created such a hierarchy -- arch or hierarchy that  
23 most of the money was going to the -- to the people of  
24 the organization. It wasn't fondling (sic) through down  
25 to -- the benefits to the residents. And the Potashniks



1 realized that so we took that in-house. And I believe  
2 in 2005, alone, that on a financial statement, it was  
3 close to 900 -- I'll call it \$995,000 of payroll and  
4 related expenses that hit the books.

5 Q. Okay. But did taking that in-house ultimately  
6 help the income of Brian and Cheryl Potashnik?

7 A. Ultimately, yes, and gave the proper services  
8 that was needed to -- and deserving to our residents, our  
9 clients.

10 Q. Okay. Your -- if you could take a look at  
11 Exhibit 2.

12 A. (Witness complies.)

13 Q. The -- the contract talks about a detailed bonus  
14 plan being provided, "a detailed bonus" -- whoops. "A  
15 detailed bonus plan will be provided within 90 days of  
16 employment".

17 A. Yes, ma'am.

18 Q. Okay. And was -- was any written plan ever  
19 provided to you?

20 A. No, ma'am, never.

21 Q. When you initially signed this, were you --  
22 okay.

23 But you -- you continued to work with the  
24 Potashniks after that?

25 A. Yes. Once I start --

1 MR. FRIEDMAN: I'm going to object to  
2 everything after "yes" as being nonresponsive.

3 THE COURT: Okay.

4 Ask your next question.

5 Q. (By Ms. Gibson) And -- so when you didn't get  
6 the bonus plan in the first 90 days, what was the  
7 discussion like with whoever, Brian or Cheryl, or whoever  
8 you may have talked about with it?

9 A. It was -- it was not mentioned on the 90th --  
10 91st day. It was mentioned probably a few months later,  
11 when I kind of realized it. And it -- we talked about  
12 putting something together. However, it just never  
13 happened, you know. And I think part of it is we were  
14 all so very, very busy.

15 Q. And --

16 A. And it didn't -- I was more focused on the --  
17 our clients, our residents --

18 MR. FRIEDMAN: I'm going to object to  
19 everything after --

20 MS. GIBSON: And --

21 MR. FRIEDMAN: -- "later" as being  
22 nonresponsive.

23 THE COURT: Overruled.

24 Q. (By Ms. Gibson) So initially -- so after  
25 signing the initial employment agreement, did you ever

1 talk about the agreement with the Potashniks in the first  
2 couple of years, about the terms of it?

3 A. Not the terms, no.

4 Q. Did you have oral discussions about the annual  
5 bonuses?

6 A. Yes. I brought it up that we're past -- past  
7 due -- it was not the first --

8 MR. FRIEDMAN: Object to everything after  
9 "yes" as being nonresponsive.

10 THE COURT: Overruled.

11 Q. (By Ms. Gibson) Go ahead.

12 A. I didn't approach after the first year. I  
13 approached it the second -- second year. Again, we were  
14 so ingrained on reestablishing and rebuilding with the --  
15 the growth that was provided to us by development and  
16 construction that wasn't my number one worry. It  
17 probably shouldn't -- should have been. I should have  
18 looked at -- through it myself, but --

19 MR. FRIEDMAN: Object to being --

20 THE WITNESS: -- I didn't.

21 MR. FRIEDMAN: -- nonresponsive. She asked  
22 him about conversations, not about therapy sessions.

23 THE COURT: State your objection. Say it's  
24 objection, nonresponsive.

25 MR. FRIEDMAN: Nonresponsive.

1 THE COURT: Overruled.

2 MR. FRIEDMAN: All right. Thank you.

3 THE COURT: Break up your questions,  
4 Ms. Gibson.

5 MS. GIBSON: Okay.

6 Q. (By Ms. Gibson) So, Jeff, when I -- when I ask  
7 a question, I know you're anticipating what the next one  
8 is and I'll try to be better about them --

9 A. Okay.

10 Q. -- but that's why he's objecting.

11 A. Oh, I'm sorry.

12 Q. Like, I'll say, Did you have a discussion and  
13 you'll go ahead and tell me what the discussion was.

14 A. Okay.

15 Q. So I think that's what Mr. Friedman's issue is.

16 And after you moved to Texas --

17 A. Yes, ma'am.

18 Q. -- you also, in the early time frame, had your  
19 Vegas home for sale?

20 A. My -- my family was still living in Vegas  
21 because we didn't find a house until October of '04 and  
22 then they eventually moved -- yes, we did have our Vegas  
23 house still.

24 Q. And ultimately was it sold?

25 A. Ultimately, yes.

1 Q. Okay. And did you make a good profit?

2 A. Yes, we did.

3 Q. And in the first two -- so in your initial term  
4 of employment, you weren't -- you weren't hurting for  
5 money?

6 A. Not at that time, no. Vegas was good to me.

7 Q. So in your -- when you were closing on a home in  
8 Dallas, do you recall a discussion with Brian Potashnik  
9 about a payment to help you out?

10 A. Yes, ma'am.

11 Q. Okay. And how -- tell me about the  
12 conversation?

13 A. Explained the conversation being that we have a  
14 house that we're prepared to buy, but we're -- have to do  
15 a bridge loan and we're short on cash and would there be  
16 a possibility that the company could help me out.

17 Q. Okay. And --

18 A. And they did.

19 Q. And what did -- what did Brian say in response,  
20 other than he would help you out? What did he do for  
21 you?

22 A. He -- he gave -- gave me the moneys.

23 Q. Okay. How much?

24 A. 50,000.

25 Q. Okay. And when -- when that happened, did you

1 appreciate it?

2 A. Very much so.

3 Q. And when that happened, pursuant to your written  
4 agreement --

5 MR. FRIEDMAN: Thank you.

6 Q. (By Ms. Gibson) -- there was -- you were  
7 supposed to be employed at the end of the first year to  
8 get the minimum of 50, right?

9 A. That's what it says, yes.

10 Q. Okay. But you and -- in connection with your  
11 conversations with Brian, did y'all document -- did you  
12 amend your contract or anything for that initial \$50,000  
13 payment?

14 A. No, it was oral. It was a discussion and he  
15 agreed to it and soon thereafter, I received a check.

16 Q. Okay. And initially what did Brian Potashnik  
17 tell you about the 50,000?

18 A. The phrase was, it was a forgiveness loan. In  
19 other words, it wasn't -- wouldn't necessarily apply to  
20 my annual bonuses.

21 Q. Okay. What -- what is the effect of that?  
22 What's a forgiveness loan?

23 A. That -- that it wasn't going to -- that I didn't  
24 have to repay it back.

25 Q. Okay. And -- but that's what -- whose idea was

1 that, the forgiveness loan?

2 A. Brian.

3 Q. Okay. And later, did you find out that --

4 whether or not that is okay to do?

5 A. Yes, I did.

6 Q. What'd you find out?

7 A. Well, I had to pay taxes on that -- that money  
8 and it went against normal accounting practices.

9 Q. Okay. So ultimately, that was settled out to  
10 treat it as, you know, normal -- normal income --

11 A. Right.

12 Q. -- right?

13 Okay. And also where did that first check  
14 come from? Did it come from Southwest Housing  
15 Management?

16 A. No, ma'am. It came from Affordable Housing  
17 Construction.

18 Q. Okay. And so that's something that had to be  
19 settled out on the books as well?

20 A. Yes, ma'am.

21 Q. Okay. So you talked about various things that  
22 might increase overhead for Southwest Housing Management,  
23 but, ultimately, make more money for the Potashniks and  
24 the organization as a whole.

25 During your tenure, was the organization, as

1 a whole, profitable?

2 A. Yes.

3 Q. Could you explain that?

4 A. Yes. The -- the construction company was the  
5 largest moneymaker. During the time period with the --  
6 with the pipeline as well as development, were the two  
7 entities that were profitable.

8 Q. Okay. And can you give me -- or not can you.  
9 Would you please give me one example of something that  
10 you worked with construction on that would save money for  
11 the organization?

12 A. Working with construction. Well, we talked  
13 about the signage, we did various value engineering on  
14 the properties. The -- the apartment communities  
15 sometimes had an enormous amount of land that were not  
16 necessarily the "Class A" property location. And there  
17 would be a design -- a site plan designed for the  
18 property. And I worked closely with development,  
19 particularly Greg Moss, and we would -- a lot of times  
20 rework the site plan with the engineers, if they could,  
21 and -- and -- but it also worked closely with  
22 construction and with some of the contractors, like  
23 landscaping contractors.

24 Because if you have a property that is 250  
25 units and it's built on 55 acres, you don't want to be



1 mowing 55 acres. Maybe not all that's usable. But let's  
2 say 40 of it is, but I only need 30 of it. So, you know,  
3 we thought ahead so we could be -- didn't have that  
4 additional burden put on the property, you know, forever.

5 Q. Okay.

6 A. That was very important.

7 Q. And so your first anniversary dates -- well,  
8 let's -- let's back up a moment.

9 What was your start date at Southwest  
10 Housing?

11 A. March 15th of 2004.

12 Q. Okay. So 03/15/04 is your start date.

13 And so around -- just not long after your  
14 first anniversary date, what's the next significant event  
15 that happened at work?

16 A. The -- the next unfortunate event was the day  
17 after Father's Day and the FBI raided the corporate  
18 office.

19 Q. Okay. And the day after Father's Day was --

20 A. And that -- and that was, I believe, June 20th  
21 of 2005.

22 Q. Okay. And did you have a conversation at this  
23 time with the Potashniks about this issue?

24 A. No. Brian and Cheryl were not available  
25 during -- at that time. They came at the time when we

1 were having cake for Father's Day. So it was probably  
2 about 12:30, noonish. And I had not heard -- I was  
3 surprised that Brian and Cheryl weren't there because  
4 they always participated in, you know, celebrations,  
5 birthdays, team effort. And, I believe, I had heard --

6 MR. FRIEDMAN: I'm going to object to this  
7 as being nonresponsive to the question asked.

8 THE COURT: All you have to do is say  
9 nonresponsive.

10 Break up your questions, Ms. Gibson.

11 MS. GIBSON: Sure.

12 Q. (By Ms. Gibson) So when the FBI raid happened,  
13 the Potashniks weren't there.

14 Who dealt with the FBI?

15 A. I did.

16 Q. Okay. That day?

17 A. Face to face.

18 Q. Okay. And after that, did the company have to  
19 respond to requests for documents and things of that  
20 nature?

21 A. Yes. To my understanding, there was a variety  
22 of subpoenas that went to different people that had to do  
23 different things, but I had a very long list for my  
24 portion.

25 Q. Okay. So --

1 THE COURT REPORTER: I'm sorry. For your  
2 what?

3 THE WITNESS: For my portion.

4 Q. (By Ms. Gibson) Okay.

5 A. Under my control or area of expertise.

6 Q. All right. And so your portion, are you talking  
7 about management documents?

8 A. Yes, ma'am.

9 Q. Okay. You handled that.

10 Do you know who handled documents for the  
11 construction arm? If there were?

12 A. If there -- I'm not sure if there really was a  
13 construction arm. If so, it would have been -- when they  
14 came in, they --

15 Q. So -- so --

16 MR. FRIEDMAN: Nonresponsive, Your Honor.

17 THE COURT: Break up your questions.

18 MS. GIBSON: I'm on to the next question.

19 THE WITNESS: Okay.

20 Q. (By Ms. Gibson) So did the development company  
21 receive any subpoenas, to your knowledge?

22 A. I'm not sure.

23 Q. Okay.

24 A. I'm not sure who was subpoenaed and what, if  
25 they were.

1 Q. Did the Potashniks talk to you about your role  
2 in handling whatever was needed for the FBI investigation  
3 as far as the management?

4 A. Well, it couldn't come at a -- at a more  
5 opportune time at the corporate office. Simply that  
6 we're having cake and ice cream --

7 Q. Well, wait. I'm sorry, Jeff.

8 A. Yes, ma'am.

9 Q. I'm just trying to avoid hearing from --

10 A. Okay.

11 Q. -- Mr. Friedman.

12 MR. FRIEDMAN: Well, if you ask him  
13 questions, you wouldn't hear from me at all.

14 THE COURT: Okay. Keep your sidebar --

15 MS. GIBSON: Mr. Friedman, I'm --

16 MR. FRIEDMAN: Well, sidebar was directed to  
17 me, Your Honor.

18 THE COURT: You're --

19 MR. FRIEDMAN: And I'm just doing my job  
20 like Mr. Carpenter did his.

21 THE COURT: Have a seat.

22 Q. (By Mr. Gibson) I don't even remember what I  
23 asked you. Let me go back. I'm asking in connection  
24 with the entire investigation.

25 As far as requests for information, did you

1 have a discussion about the Potashniks, overall, about  
2 what your role would be?

3 A. I participated -- we had in-house counsel at the  
4 time --

5 MR. FRIEDMAN: I'm going to object to being  
6 nonresponsive.

7 MS. GIBSON: I'm just asking about if he had  
8 discussions with the Potashniks.

9 THE COURT: Can you answer, yes or no?

10 THE WITNESS: Yes.

11 THE COURT: Okay.

12 Q. (By Ms. Gibson) Okay. What were your  
13 discussions with the Potashniks on that issue?

14 A. Primarily, to keep everybody focused.

15 Q. Okay.

16 A. Not to worry. We did a promotional campaign the  
17 very next day, Southwest Housing solid as a rock was on  
18 everyone's desk the next morning at the corporate office.  
19 And we, you know, kept everybody motivated.

20 Q. Okay. And at the time, did you believe in Brian  
21 and Cheryl Potashnik?

22 A. Oh, absolutely.

23 Q. Did you -- can you -- could you trust them?

24 A. Yes, ma'am.

25 Q. And did you continue to support them?

1 A. Yes.

2 Q. And then not very long after that, what's the  
3 next big event that happened?

4 A. What was it --

5 Q. Just a few months later, what happened?

6 A. Oh, yeah, Hurricane Katrina and Rita hit at the  
7 end of August, first -- first of September.

8 Q. Okay. So you think August, September of '05,  
9 Katrina and Rita?

10 A. Yes.

11 Q. And what did -- what -- what did -- I'm not  
12 asking about you in particular, but what did the  
13 organization, as a whole, decide to do when the  
14 hurricanes hit?

15 A. I believe we were very proactive. We had a  
16 discussion to -- and compassionate for the victims and we  
17 wanted to -- from a professional, business side, as well  
18 as personal, business side, we wanted to be able to  
19 support and help the victims as much as possible and we  
20 did. And we did that by -- through housing, through  
21 making arrangements with doctors and nurses, having buses  
22 that -- for the senior properties in Houston.

23 To -- as Mark Jones proudly mentioned,  
24 backing up two brand new elderly buses and putting  
25 seniors in apartments, working with Gallery Furniture,

1 building furniture over the weekend so we can furnish  
2 apartments for them. It was a -- it was a business  
3 decision, it was a humanitarian decision that Brian made  
4 and Cheryl made and I certainly agreed with it as well.

5 Q. Okay. And what -- without telling me everything  
6 you did personally to help in Katrina, can you give me,  
7 like, two -- two examples of your role?

8 A. Well, besides a lot of coordination, I was in  
9 the field. I was in Houston a great deal of the time.  
10 After the evacuees -- I'm sorry -- the victims were kind  
11 of processed into Houston, they started coming into  
12 Dallas, Cheryl and a -- and a group of our managers here  
13 worked through the weekend, on Labor Day weekend, I  
14 believe, it was. A lot with DHA opened up and they  
15 created Section 8 vouchers for the people so they could  
16 provide housing.

17 We took care of a tremendous amount of  
18 donations. We had people going to get essential needs,  
19 as kind of -- my wife said from blankets, pillows,  
20 bedding, you know, personal utensils, I mean, I had  
21 people in my -- my personal truck that I took to our  
22 properties and the teddy bear the little girl had was  
23 still wet. It was a very sad, very troubling time for  
24 those people --

25 Q. Okay.

1 A. -- for the people.

2 Q. And then -- so your anniversary date -- your  
3 next anniversary date would have been 3 -- I can't talk.  
4 About March of '06, your anniversary.

5 At this point, what's going on with annual  
6 bonuses by this anniversary?

7 A. Well, about this time is when I had sales  
8 proceeds coming in from my house in Las Vegas. I was not  
9 strapped for cash. We were very busy for what I first  
10 started with, all the properties in the growth and  
11 everything. But we had Katrina, and with Katrina it  
12 was --

13 MR. FRIEDMAN: Objection. Nonresponsive,  
14 Your Honor.

15 THE WITNESS: -- a nightmare.

16 MS. GIBSON: Okay.

17 THE COURT: Break up your questions,  
18 Ms. Gibson.

19 Q. (By Ms. Gibson) And what was the next major  
20 event that happened? So it's March of '06 -- let me ask  
21 this: What happens in May of '06?

22 A. May of '06 I was very surprised, Brian calls  
23 me --

24 Q. Well, can you just give us the shorthand --

25 A. Yes.



1 Q. -- of what happened in May of '06 and then I can  
2 ask you more about details.

3 A. Yes. Brian asked me to come to his house, he  
4 wanted to have a conversation.

5 Q. Okay. And did -- did you go to his house?

6 A. Yes, ma'am.

7 Q. Okay. Just tell me about the initial arrival,  
8 what your conversation was, just the first few moments.

9 A. Hello, greetings, Brian had a drink in his hand,  
10 smoking a cigarette and said, You know, it's -- it's  
11 been -- been a long year or last year's been pretty hard  
12 and there's some -- something I want to talk to you  
13 about. I mean, in general, that was -- that was it.

14 Q. Okay.

15 A. Just open pleasantries and it was outside on the  
16 front patio.

17 Q. All right. Did you ask him -- did you ask why  
18 you were being called to his house?

19 A. Well, he told me.

20 Q. Okay. And ultimately what was the gist of what  
21 happened during your discussion?

22 A. Brian said him and Cheryl had given a lot of  
23 thought, that they were planning to put the company and  
24 the properties up for sale. And they said they're  
25 selling the business.

1 Q. All right. And what else did Brian tell you  
2 about selling the business?

3 A. After a little bit of shock, he continued, said,  
4 You know, this will be a -- this will be good for the  
5 Potashnik family and the Carpenter family, that we worked  
6 really hard and should reap some of the -- basically,  
7 some of the rewards. But that we do not have a buyer,  
8 we're just -- kind of just now getting into the process  
9 through a broker, that I need to know -- I need you to --  
10 to be very focused, you're going to be on the front  
11 lines, if you will --

12 MR. FRIEDMAN: Your Honor, can we go to  
13 question and answer?

14 THE COURT: Okay. Well, she -- her question  
15 was: What was the gist of the conversation.

16 But you need to look for a stopping point  
17 because we're getting to our 2:15 break.

18 MS. GIBSON: Okay. We can go ahead and  
19 stop.

20 THE COURT: We'll take our ten-minute break,  
21 ladies and gentlemen.

22 THE BAILIFF: All rise.

23 (Jury ushered out.)

24 (Break was taken.)

25 THE BAILIFF: All rise.

1 (Jury ushered in.)

2 THE COURT: Everyone have a seat, please.

3 Have a seat, Mr. Carpenter.

4 Welcome back. We'll continue with

5 Mr. Carpenter's testimony. Ms. Gibson is the attorney

6 asking questions. We'll go about an hour or so before we

7 take another break. And we'll go until about 4:30 today,

8 before we stop for the day. And, again, we'll resume on

9 Monday, not on Friday.

10 Ms. Gibson?

11 DIRECT EXAMINATION (cont'd)

12 BY MS. GIBSON:

13 Q. Mr. Carpenter --

14 A. Yes, ma'am.

15 Q. -- so during the discussion at the Potashnik's  
16 home, what's the gist of -- or the ultimate end of what  
17 Brian told you?

18 A. Selling the company, would definitely like for  
19 me to stay.

20 Q. And did he offer you anything to stay --

21 MR. FRIEDMAN: Your Honor, can I just ask  
22 the witness to speak into the microphone so we can all  
23 hear.

24 THE WITNESS: My apologies.

25 MR. FRIEDMAN: No, don't mind apologizing.

1 If I have better hearing, it'd be all right.

2 THE WITNESS: It was to stay on board, that  
3 there would be a lot to do, I would be very involved in  
4 the due -- particularly when it comes -- once we select a  
5 buyer, be in a very -- actively involved in the due  
6 diligence and communications between our teams and their  
7 teams and so forth. So he made -- that you're very  
8 important, key player to making this successful.

9 Q. (By Ms. Gibson) Okay. And did Brian Potashnik  
10 say -- did he offer anything in exchange for you to stay?  
11 Did he tell you what would happen if you stayed?

12 A. Yes. He said once we get further down the line  
13 and we pick a horse, so to speak, and we know the numbers  
14 better, that we'll put together a very lucrative bonus  
15 program for you, for your efforts.

16 Q. Okay. So at this point in time, if I understand  
17 you correctly, there was no -- there was no actual  
18 purchaser yet?

19 A. That's correct.

20 Q. Okay. And so did he also talk to you about, not  
21 the amount of the bonus, but in general whether --  
22 whether it would be significant or not?

23 A. It -- it would be significant. He said it would  
24 be a really good day for the Potashniks and the Carpenter  
25 family and in the -- in the millions was the impression

1 and what was given. I remember very clearly, my daughter  
2 just graduated, the day before my parents were in town  
3 so...

4 Q. Okay. And at one point I think you thought the  
5 date was around May 22nd. But what did you ultimate --

6 MR. FRIEDMAN: I'm going to object to  
7 leading, Your Honor.

8 Q. (By Ms. Gibson) What did you ultimate -- well,  
9 let me just ask it this way: What did you ultimately  
10 decide on -- on what you think the approximate date of  
11 this meeting was?

12 A. Well --

13 MR. FRIEDMAN: She told him to date so I'm  
14 going to object to --

15 MS. GIBSON: No.

16 MR. FRIEDMAN: -- in the future to leading.

17 THE WITNESS: It was --

18 THE COURT: All right. Well --

19 THE WITNESS: -- it was Sunday, May 21st. I  
20 believe that was a Sunday.

21 Q. (By Ms. Gibson) Okay.

22 A. Saturday, the 20th, was my daughter's graduation  
23 from high school.

24 Q. Okay. And did you go back and look at anything  
25 to try and -- try and nail down a date.

1 A. I'm sorry?

2 Q. Did you go back and look at anything to try and  
3 figure out what the date was?

4 A. Yes.

5 Q. Okay.

6 MR. FRIEDMAN: Your Honor, we're just going  
7 to take Ms. Gibson's word for it. We don't have to spend  
8 time on it.

9 THE COURT: That it's May 20th or 21st?

10 MR. FRIEDMAN: Whatever she testified to.

11 THE COURT: Don't do that.

12 MS. GIBSON: He testified it was the 21st.

13 THE COURT: She -- he said whatever you  
14 testified to.

15 If you're saying you'll take whatever  
16 Mr. Carpenter testified to, we'll move on for the record.

17 Q. (By Ms. Gibson) Okay. So at some point  
18 earlier, you had thought it was a different date, but  
19 only a day difference?

20 A. Yes, ma'am.

21 Q. Okay. And with respect to what your role would  
22 be in helping with the sale, can you give me the -- just  
23 the gist, the summary -- the executive summary of what  
24 Brian said he wanted you to be doing.

25 A. Participate in selling Southwest Housing to

1 potential buyers. Brian, obviously, took -- takes the  
2 lead on that, being involved with that, keeping the teams  
3 motivated. And we had a lot of properties that were  
4 lease up. We had a lot of new product coming on board  
5 that we didn't -- did not want to lose -- as quote, we  
6 did not want to lose eye on the prize. And that you  
7 would be working very -- very closely, once we pick a  
8 purchaser through the due diligence process and the many  
9 interactions that needed to take place. You and -- to  
10 coordinate -- and with your team.

11 Q. Okay. And at the time that Brian tells you this  
12 is -- you know, what he intends to do for you, what was  
13 your understanding of Brian's position with respect to  
14 Southwest Housing Management? Like, who was he at  
15 Southwest Housing Management? What was his position?

16 A. Who, Brian?

17 Q. Yes.

18 A. The president.

19 Q. Okay. And was he also an owner?

20 A. Yes.

21 Q. Or that was your understanding?

22 A. Yes.

23 Q. Okay. And with respect to Southwest Housing  
24 Development at the time you-all had this conversation,  
25 what was your understanding of Brian Potashnik's position

1 with respect to development?

2 A. President and owner.

3 Q. Okay. And at the time Brian Potashnik is  
4 telling you about what's going to happen, what was your  
5 understanding of Brian Potashnik's position with respect  
6 to Affordable Housing Construction?

7 A. Brian was the president and -- and owner of it  
8 as well. And all -- all the entities, those three  
9 businesses would be sold with the properties.

10 Q. Okay.

11 A. Essentially getting out of the business.

12 Q. And what are -- what types of -- well, let me  
13 just cut to the chase.

14 Did Brian Potashnik ask you to meet with  
15 potential purchasers and their investors?

16 A. Yes.

17 Q. Okay. What did he -- can you give us an example  
18 of what he asked you to do in that regard?

19 A. To -- to tour them and, as we would call it, a  
20 dog and pony show, sell the communities, you know, give  
21 them the history of the properties, stop, meet the staff,  
22 let them walk around, get a feel for the properties that  
23 they would be purchasing, answer any questions that they  
24 would have. And I did that individually on two different  
25 occasions.



1 Q. Okay. And was -- was anyone else with you when  
2 you were marketing to these purchasers?

3 A. Only the potential purchasers.

4 Q. Okay. Although I'm not saying other people  
5 didn't also do tours, but with respect to the marketing  
6 to potential purchasers that Brian asked you to do, of  
7 all of the people and all of the companies, did he select  
8 anyone but you to do those?

9 A. I can't -- I --

10 Q. To go with you?

11 A. To go with me?

12 Q. Right.

13 A. No.

14 Q. At the -- toward the bottom of that stack, Jeff,  
15 is Exhibit 35.

16 A. That's too far.

17 Q. I'll find it for you.

18 A. I'm almost there. 34, the one I need a  
19 microscope to read?

20 Q. Yes. Sorry. I tried to expand it.

21 Okay. On Exhibit 35 that we discussed with  
22 Brian. This is in June of 2006. Brian Potashnik is  
23 asking you to handle a meeting in San Antonio for  
24 Greystone and Company?

25 A. Yes, ma'am.

1 Q. Who was Greystone and Company in relation to the  
2 asset sale?

3 A. They were a potential purchaser.

4 Q. And at the bottom of this e-mail, you see  
5 there's contact information for RBC Capital Markets?

6 A. Yes.

7 Q. Who was RBC Capital Markets --

8 MS. GIBSON: Strike that.

9 Q. (By Ms. Gibson) What was RBC Capital Markets'  
10 role as far as this Greystone tour?

11 A. They were the -- I'll probably get the  
12 terminology wrong, but they were the investment broker.  
13 They were the ones that guided and steered Brian on  
14 selling the business. So they were helping brokering the  
15 sale, if you will, as well as other advice, investment  
16 advice and so forth.

17 Q. And did --

18 A. And --

19 Q. Go ahead.

20 A. And Kelley Heinsman was one of the people and  
21 one other person that I recall.

22 Q. Okay. And in connection with this tour, RBC  
23 Capital Markets, were they bringing in potential  
24 purchasers for the Potashniks?

25 A. Yes.

1 Q. Did Brian Potashnik ever tell you in connection  
2 with marketing Greystone that he wasn't interested in  
3 them?

4 A. I don't recall. They were not chosen.

5 Q. Okay. So fairly immediately then in 06/06,  
6 you're marketing the property to a prospective purchaser.

7 Okay. Then by -- what -- in connection with  
8 the promise about a lucrative bonus coming, if you'll  
9 stay and the asset sale happens, what's the next big  
10 event in your conversations with Brian?

11 A. That was when he informed me that he picked a  
12 horse, if you will. He picked a company that they  
13 thought they would -- could close and would close. I  
14 believe he mentioned they weren't the -- it wasn't the  
15 highest price, but it was confident in closing.

16 Q. Okay.

17 A. And that was Cascade Pinnacle --

18 Q. All right.

19 A. -- who ultimately brought the property --  
20 properties.

21 Q. Okay. And so when did he tell you that?

22 A. That was on October 13th of 2006.

23 Q. Okay. Whoops -- my highlighter won't work.

24 And so -- and does Brian say anything to you  
25 on October 13th about getting into specifics on the

1 bonus?

2 A. Yes. That's when he informed me of the  
3 lucrative bonus and we walked through it. And it was  
4 simple math, if you will. It was based on an LOI that  
5 was getting ready to be signed and my bonus was going to  
6 be 3 percent of the gross sales price, minus -- in  
7 Brian's terms -- normal closing costs, including, like,  
8 broker fees, title fees, legal fees, those types of  
9 things like that.

10 MR. FRIEDMAN: Sorry. I didn't get it.

11 THE WITNESS: For instance, broker's fees,  
12 normal closing costs, related closing costs.

13 MR. FRIEDMAN: Broker's fees, you said  
14 something else?

15 THE WITNESS: Broker's fees, title fees,  
16 legal fees. And then also lets the -- during this  
17 conversation, sales proceeds, bonus, severance, whatever  
18 you want to call it, of other employees would be deducted  
19 before my 3 percent. My 3 percent would be calculated  
20 off that.

21 Q. (By Ms. Gibson) Did Brian Potashnik explain to  
22 you why he wanted this last one to come off of the -- to  
23 come out of the gross?

24 A. Well, it helped -- we were going to put together  
25 a program, pay-to-stay severance, sales proceeds bonus,

1 whatever you want to call it, for other people and it was  
2 motivational to -- not to make some people real high that  
3 would, you know, give away the farm -- which I would  
4 never do. But it was also to make it fair and reasonable  
5 and I agreed with that, I understood that.

6 Q. Okay. And was another consideration that you  
7 still -- because you needed the sale to go through, you  
8 also would still give enough to get people to stay?

9 A. Yes.

10 Q. And you talk about the gross.

11 Gross what?

12 A. Gross dollar amount, the sale amount.

13 Q. Okay.

14 A. I believe at that time we were using 36,000,000  
15 off of the LOI.

16 Q. Okay. And this is based on an LOI that was --

17 A. Letter of intent.

18 Q. -- not yet signed?

19 A. It was signed a few days later, yeah.

20 Q. Okay. So that should be accurate. Say about to  
21 be signed. And I'm sorry.

22 What was -- what was the total you were  
23 working off of on the gross?

24 A. The 36,000,000.

25 Q. Okay. So at this time it was expected to

1 be 36,000,000 gross and at the time of -- as of  
2 October 13, 2006, did you know when this would close?

3 A. Not exactly. It was a slow -- it was an  
4 archer's process, detailed process, but it was supposed  
5 to close -- ideally it was going to close in late spring,  
6 early summer of 2007.

7 Q. Okay. So --

8 A. That was the target.

9 Q. Okay. And did y'all -- did y'all -- did Brian  
10 explain the math to you beyond the 36,000,000 gross?

11 A. No. We -- we didn't need to -- I mean --

12 Q. Well --

13 A. I mean, we walked through the math.

14 Q. Right. You walked through the math.

15 Tell us -- tell us how you walked through  
16 the math.

17 A. Well, it was 36,000,000, we assumed -- we took  
18 assumption that normal closing costs would be  
19 approximately \$1,000,000. We used -- we used  
20 another \$1,000,000 for other employee bonuses. So that  
21 effectively, it would have been 3 percent of 34,000,000,  
22 which would be the amount of \$1,020,000.

23 Q. Okay. And so 1,020,000 is the estimate.

24 And the estimated close, did you say, early  
25 spring or summer?

1 A. It was actually April, May.

2 Q. Okay.

3 A. And then kept getting delayed.

4 Q. But no one knew that as of October 13th?

5 A. That's correct.

6 Q. And then at some point, did you receive a copy  
7 of the LOI?

8 A. Yes, I did. Brian gave me a copy.

9 Q. Okay. And I'm just going to -- well, can you  
10 take a look at Exhibit 11.

11 A. Okay.

12 Q. And you see that is the Cascade letter of  
13 intent?

14 A. Yes, ma'am.

15 Q. All right. And the date on that is  
16 October 16, 2006?

17 MR. FRIEDMAN: I'm sorry.

18 THE WITNESS: Yes.

19 Q. (By Ms. Gibson) And then if you turn to the  
20 page that's marked 7 in the lower right-hand corner.

21 A. Yes.

22 Q. You see that both Cheryl Potashnik and Brian  
23 Potashnik signed this on the same day?

24 A. Yes, ma'am.

25 Q. Okay. So how many days after your discussion

1 with Brian is this about?

2 A. Three, two and a half, depending on what time of  
3 the day.

4 Q. Three, two and a half. And --

5 A. 13th through the 16th.

6 Q. Okay. Did you -- if Brian Potashnik is telling  
7 you that you're going to get a bonus off of the --  
8 essentially the seller proceeds, minus certain amounts,  
9 did you think he had authority to speak for the sellers?

10 A. Yes, ma'am.

11 Q. And the sellers in Exhibit 11 include all of the  
12 Southwest Housing entities or persons affiliated with  
13 them, right?

14 A. That's --

15 Q. Paragraph 1?

16 A. That's correct.

17 Q. Okay. And as far as you know, who are the  
18 persons affiliated that this is referring to?

19 A. Brian and Cheryl.

20 Q. And we -- we talked -- you heard from Rick Graf?

21 A. Yes, ma'am.

22 Q. Okay. And who is he at -- what was his  
23 position?

24 A. Rick was the divisional president of the central  
25 region of Pinnacle Property Management Services Inc., I



1 believe is the full name.

2 Q. He did, basically, what you did for the  
3 purchaser?

4 A. Yes.

5 Q. And --

6 A. Large company.

7 Q. When -- when was your first face-to-face meeting  
8 with Rick?

9 A. That was December 7th --

10 Q. Okay.

11 A. -- of '06.

12 Q. And where did y'all meet?

13 A. We met by our office at Rock Fish restaurant.

14 Q. What's the gist of what y'all talked about?

15 A. It was to get acquainted. Rick -- I knew Rick,  
16 Rick knew me. So it was some face-to-face time. We  
17 talked about the -- the work that's ahead for both of us,  
18 started -- talked very general about all the due  
19 diligence, who some of the players would be involved in  
20 the due diligence and went into those type of details.  
21 And it was -- it was business, but it was also casual,  
22 just to get to know each other.

23 Q. Okay. And so as of December 7, 2006, what were  
24 your thoughts about whether you were going to have a job  
25 with the purchaser after the sale?

1           A.    Well, being in the business as long as I have  
2   and knowing Pinnacle's size and what Rick did, my own  
3   assumption was that there would not be a position for me.

4           Q.    Okay.  And did --

5           A.    And it was later confirmed.

6           Q.    Okay.  And what was the reason you weren't going  
7   to have a position?

8           A.    Because they already have a Jeff Carpenter.

9           Q.    Okay.  They already -- they already have their  
10   own guy?

11          A.    That's right.

12          Q.    They got a guy?

13          A.    They got a guy and didn't need another one.

14          Q.    And -- but before we go -- before I go further  
15   in the timeline, some of those dates are pretty specific.

16                   How is it that you were able to note some of  
17   these specific dates?  Just generally.

18          A.    Generally, off my Blackberry.

19          Q.    Off your Blackberry calendar?

20          A.    Off my calendar.

21          Q.    Off your -- your -- that's an Outlook calendar?

22          A.    I'm sorry.  Outlook calendar.

23          Q.    Okay.

24          A.    Blackberry to Outlook calendar.

25          Q.    Okay.  A calendar.

1                   And then did you take any notes once things  
2 started to go south with the Potashniks?

3           A.    Yes, I did.

4           Q.    Okay.

5           A.    But not at that time.

6           Q.    All right.

7           A.    I was excited.

8           Q.    Right, right.

9                   Not in this time frame --

10          A.    Right.

11          Q.    -- right?

12                   You did -- so far through all of this, did  
13 you trust the Potashniks?

14          A.    100 percent.

15          Q.    Okay. And at the -- at the first meeting -- the  
16 very first meeting at the Potashnik's home --

17          A.    Yes, ma'am.

18          Q.    -- the one that happened in May, did -- did you  
19 and Brian Potashnik shake -- shake hands --

20          A.    Yes, ma'am.

21          Q.    -- in talking about the deal?

22          A.    Yes, we did.

23          Q.    Can you just -- you don't have to give a  
24 demonstration, but it was -- can you kind of demonstrate  
25 what the shake was like.

1           A.    Well, we were standing, shook and then kind of  
2    did the little bump on the -- on the shoulder  
3    (demonstrating).  It was a little pat because it was --  
4    as he said, this will be a really good day for the  
5    Potashniks and the Carpenters.

6           Q.    Okay.  And when you met with Brian Potashnik and  
7    he announced the specific formula --

8           A.    Yes, ma'am.

9           Q.    -- did you shake hands at that point as well?

10          A.    Yeah.  Yes, we did.

11          Q.    And what -- what was -- at what point, if you  
12    remember, did Brian Potashnik let you know that you  
13    probably were not going to have a job with the purchaser?

14          A.    It was -- it was probably shortly after Rick and  
15    I met.  It was kind of like the writing was on the wall.  
16    I would say, mid December.

17          Q.    Okay.  And in -- in December of 2006 and in the  
18    later month, did you and Brian Potashnik discuss, in  
19    addition to updates on what was going on with the asset  
20    sale, trying to have someone memorialize your handshake  
21    deal in writing?

22          A.    Yes.  When Brian made that offer, I -- I  
23    accepted, we shook hands.  He said that it will be put in  
24    writing Randy Alligood would be their attorney.  I think  
25    it was Rodney Gazelle (phonetic) would be putting it in

1 writing. And he said it would be a good day to see your  
2 name on the closing statement.

3 Q. And ultimately -- so you thought that people --  
4 or did that make you think that people getting stay  
5 bonuses might be on the closing statement?

6 A. Maybe a couple of people, but I was -- I was  
7 happy about me so I was --

8 Q. Okay.

9 A. When Brian said that, I didn't go much further  
10 than that.

11 Q. All right. All right. And Brian -- when Brian  
12 said that he would have Randy Alligood go ahead and  
13 document your deal.

14 Who was Randy Alligood?

15 A. Randy Alligood was legal counsel for -- I may be  
16 incorrect, but for all the companies that maybe -- maybe  
17 Brian and Cheryl personally. I'm not sure, but he was  
18 very involved in the company business -- company  
19 businesses.

20 Q. Okay. And -- but at this point in time, had you  
21 and Brian Potashnik ever had an issue with keeping your  
22 handshake deals?

23 A. No.

24 MR. FRIEDMAN: What point in time is that?

25 THE WITNESS: December.

1 MS. GIBSON: This is all the way through  
2 December.

3 MR. FRIEDMAN: December 31st?

4 THE WITNESS: Yeah, December.

5 MR. FRIEDMAN: Okay. Thank you.

6 THE WITNESS: No, I hadn't. I mean, things  
7 were good, working hard.

8 Q. (By Ms. Gibson) And you -- had you had any  
9 issues with working just based on oral discussions with  
10 Brian, even without a handshake?

11 A. Yes. We -- we would have -- you know, run into  
12 each other either in the hallway a lot of times. A  
13 couple of times we met in the parking lot. Brian had a  
14 lot on his plate for various reasons and I would inquire  
15 about the memorializing of the agreement. And he said  
16 that it was being worked on, that the attorneys are busy  
17 with the sale as well as criminal defense. And I -- I  
18 started becoming more concerned and frustrated just  
19 because I was told one thing and another thing was  
20 happening.

21 Q. Well, that's -- but that's --

22 A. Mid January.

23 Q. And we'll --

24 A. Okay. Sorry.

25 Q. We'll go -- we'll go into the future.

1                   Now, you -- have you discussed annual  
2 bonuses with Brian Potashnik at this point in December  
3 of 2006?

4           A.    Brian was so difficult to get a hold of to -- to  
5 be able to have lengthy discussions, no, I did not bring  
6 it up. I mean, it was -- not at that time.

7           Q.    And at a --

8           A.    There was a lot going on.

9                   MR. FRIEDMAN: I didn't hear that.

10                  THE WITNESS: There was a lot going on.

11           Q.    (By Ms. Gibson) Okay. And you -- he had just  
12 promised you a big stay bonus?

13                  MR. FRIEDMAN: Leading, leading, leading.

14                  THE COURT: Don't lead.

15                  MS. GIBSON: Okay.

16           Q.    (By Ms. Gibson) Now -- and -- and, you know,  
17 generally, you know, you said you were pretty happy with  
18 the Potashniks.

19                   Now, did you though at some point, butt  
20 heads on occasion at work over issues?

21           A.    I do not ever recall butting heads regarding  
22 work. Only as it relates to trying to memorialize my  
23 agreement, why we're here.

24           Q.    Okay.

25           A.    No, no.

1 Q. When -- on October 13, 2006, when you and Brian  
2 shook hands on the -- on the deal, where you had a  
3 specific amount --

4 A. Yes, ma'am.

5 MR. FRIEDMAN: I'm sorry. That was a yes or  
6 no?

7 MS. GIBSON: Yeah -- no, no, no. Sorry. I  
8 just --

9 MR. FRIEDMAN: I didn't hear the answer.

10 THE COURT: Repeat your question.

11 MS. GIBSON: Sure. Sure.

12 Q. (By Ms. Gibson) Oh, when you and Brian shook  
13 hands on the deal on October 13th, 2006, did Brian  
14 Potashnik tell you that the deal had to be in writing?

15 A. No.

16 Q. Why were there then discussions about just  
17 memorializing the deal you had?

18 A. Well, I wanted it memorialized because it's --  
19 it was a little bit easier, but it was also about past  
20 earned bonuses that haven't been paid out.

21 Q. What was also -- what do you mean?

22 A. I wanted the commitment of earned bonuses from  
23 prior years to be acknowledged and to be paid out. So  
24 there was a -- let's call it "the sales proceeds" or  
25 "severance bonus," the 3 percent, plus the outstanding



1 earned bonuses, annual bonuses.

2 Q. Okay. And -- and so did -- what did Brian tell  
3 you about memorializing your annual bonuses for up until  
4 that point?

5 MR. FRIEDMAN: Vegas? The time? When was  
6 this? Is this on October 13th or some other time?

7 MS. GIBSON: No, some other time. I'll  
8 rephrase it.

9 THE WITNESS: No, this is --

10 MS. GIBSON: I'll rephrase it.

11 THE COURT: Let her ask the question.

12 Q. (By Ms. Gibson) When you talk about wanting to  
13 also memorialize bonuses that were annual, before you  
14 asked about memorializing that, what had your discussions  
15 with Brian Potashnik been, generally?

16 MR. FRIEDMAN: What's the point in time,  
17 Your Honor?

18 MS. GIBSON: The point in time is before  
19 they talked about memorializing the annual bonuses and  
20 years after year one.

21 THE WITNESS: The time frame would be  
22 January, 2007, time frame. I trust -- believed in Brian  
23 as Mark Jones says -- as passionate as he is about  
24 Southwest Housing Company and the Potashniks, I was the  
25 same way. Loved what I was doing, loved what we did. I

1 was getting -- you know, after the holidays thinking more  
2 about it --

3 MR. FRIEDMAN: I'm going to object as being  
4 nonresponsive.

5 THE COURT: All right. Break up the  
6 questions, Ms. Gibson.

7 MS. GIBSON: Okay. Sure.

8 THE WITNESS: My apologies.

9 Q. (By Ms. Gibson) At some point, you received a  
10 copy of an LOI?

11 A. Yes, ma'am.

12 Q. Okay. And do you recall what date that was?

13 A. Brian handed me a copy and Keith Jones, I  
14 believe, e-mailed me a copy. It was either that day or  
15 the day after, it was within a couple of days. I can't  
16 give the exact date.

17 Q. Okay. I'm handing you Plaintiff's Exhibit 49.  
18 Do you recognize that document?

19 A. Now, I can give you that date.

20 Q. But, first I have to --

21 A. Yes.

22 Q. -- I have to offer this.

23 A. Yes. I -- it's e-mail --

24 Q. Go ahead.

25 A. It's an e-mail to Keith Jones to Sara Reidy and

1 myself, regarding the LOI document.

2 Q. Okay. And so Keith Jones sends you a copy of  
3 the LOI in January --

4 MS. GIBSON: Oh, I'm sorry. I'll offer  
5 Plaintiff's 49.

6 THE COURT: Any objection?

7 MR. FRIEDMAN: No objection, Your Honor.

8 THE COURT: 49 is admitted.

9 (Plaintiff's Exhibit No. 49 is admitted.)

10 Q. (By Ms. Gibson) And the LOI copy that he's  
11 sending you, is that the same letter of intent that we  
12 went over earlier, signed a few days after your --

13 A. Yeah.

14 Q. -- conversation with Brian on October?

15 A. Yes, ma'am.

16 MR. FRIEDMAN: This is the signed letter of  
17 intent, Your Honor?

18 THE COURT: It's whatever you have, she just  
19 admitted it.

20 MR. FRIEDMAN: No, no, we admitted a  
21 transmittal e-mail, but nothing attached.

22 MS. GIBSON: He just testified that it was  
23 the same letter of intent that we just talked about.

24 MR. FRIEDMAN: We talked about two. It's  
25 the signed letter of intent.

1 THE WITNESS: I --

2 THE COURT: Okay. Let her ask the question  
3 then you cross-examine him afterwards.

4 Q. (By Ms. Gibson) And so at this point in  
5 January, why -- do you recall why Keith is sending you a  
6 copy of the LOI?

7 A. He was -- office next to Cheryl to --

8 MR. FRIEDMAN: Objection. Hearsay.

9 THE COURT: Do you recall why he sent you  
10 the -- why Keith Ellison -- Jones did?

11 MS. GIBSON: Yes.

12 THE COURT: Okay. Overruled.

13 THE WITNESS: He was sharing that we have  
14 the signed document that most likely that sale -- a deal  
15 was going to go place, even though there was a lot of  
16 things to make it happen, for it to come.

17 Q. (By Ms. Gibson) Okay. And so this e-mail is in  
18 January. So on 01/17/07 when Keith Jones sends the LOI,  
19 what's the anticipated closing date at this point for the  
20 asset sale?

21 MR. FRIEDMAN: Objection.

22 THE WITNESS: The same as we discussed.

23 Q. (By Ms. Gibson) Okay. And that was?

24 A. The -- targeting April, May of '07.

25 Q. Okay. And you talked earlier about -- at some

1 point, wanting to talk to Brian Potashnik again about  
2 memorializing your handshake deal. And I thought you  
3 said that -- that heated up in January; was that right?

4 A. Yes. Earlier in January, before I received the  
5 LOI, Brian and I talked. I -- I said, I'm faithfully --  
6 basically the conversation, I'm faithfully committed to  
7 the task at hand, but I keep getting put off, being told  
8 that it's going to be happening, it's being -- happening  
9 and it's not happening. And I -- I must have been a  
10 little bit more straightforward about it because I was in  
11 Las Vegas working at our property there, Casa Del Norte,  
12 it was going through a rehab, construction company was  
13 doing the rehab. And the construction company actually  
14 pulled off. And so the rehab was being lead by Mark  
15 Harding, who was my director of facilities and  
16 maintenance and myself with the site team so...

17 Q. Let me just stop you for a minute.

18 A. Yes, ma'am.

19 Q. And I'll go to that event.

20 So you're -- you're in Las Vegas and you  
21 said Casa Del Norte, is that one of the --

22 A. That's the name of the apartment community.

23 Q. The apartment community in Vegas?

24 A. (Witness nods head.)

25 Q. And where did you and -- when did this happen,

1 approximately?

2 A. Brian --

3 Q. No, I'm sorry. No, no, no. I had just asked  
4 whether you were working.

5 So did you meet with Brian to talk about  
6 the 3-percent handshake deal --

7 A. Yes.

8 Q. -- while you were in Vegas?

9 A. Yes.

10 Q. Okay. Approximately -- around when did y'all  
11 meet for that?

12 A. I believe we met 7:30, 8 o'clock. We met at the  
13 Venetian Hotel.

14 Q. Oh, I'm -- I'm sorry. I meant approximately  
15 when, meaning, like, what -- what approximate date?

16 A. Oh --

17 Q. Not what time.

18 A. -- it was prior to the LOI. It was, I believe,  
19 the 12th --

20 Q. Okay.

21 A. -- of January.

22 Q. All right. And how did that meeting come about?

23 A. I had previous discussions before I left town  
24 because I was at Casa Del Norte for a little while. And  
25 I don't know -- Brian felt compelled to come out to meet

1 with me face to face. And we met at the Venetian and  
2 there's an Asian-styled restaurant. I don't know if it's  
3 Chinese or whatever. And we had dinner and talked --  
4 talked about what was going on at the property and  
5 then --

6 Q. Okay.

7 A. -- the proceeds bonus.

8 Q. Okay. So Brian flew out to meet you to talk  
9 about this?

10 A. Yes, ma'am.

11 Q. And he flew out -- is that because you wanted --  
12 you were saying this needs to get memorialized, our deal  
13 needs to be put down in writing; is that why he flew out  
14 there?

15 A. I was -- I was surprised that he was coming out,  
16 but that was the gist of it, yes, to -- to make sure I  
17 didn't lose focus. He wanted to make sure that I'm on  
18 pace and -- and committed.

19 Q. Okay. And tell me what -- what you and Brian  
20 Potashnik discussed about documenting your deal in  
21 writing?

22 A. We -- we talked why it wasn't done when it was  
23 said that it was going to be done by the -- our attorneys  
24 and just given the reasons why they were too busy to do  
25 it. And I was pretty adamant that, am I not important

1 enough that -- that it can't be done because it should be  
2 very simple to do, for matter of a few minutes. Brian  
3 stated that, Jeff, if it's that important to you, you  
4 know, I'll write it on the back of a napkin. And I said,  
5 Okay. And we didn't because it was nice place and it was  
6 clothe napkins. But he said that, I'll -- he stated that  
7 he'll follow-up on it and he said, If you would like to  
8 try to put it in writing, feel free to do it and submit  
9 it to me as well to help expedite.

10 Q. Okay. And at this point, you -- did you still  
11 trust -- you -- at this point, were you still trusting  
12 Brian Potashnik to keep his word?

13 A. Yes, I was. I mean, someone flies out there  
14 just to have dinner with me to --

15 MR. FRIEDMAN: Nonresponsive.

16 THE WITNESS: Yes.

17 Q. (By Ms. Gibson) Okay. And what's the reason  
18 you decided to go ahead at that point and trust Brian to  
19 honor his word? What you were just about to say?

20 A. Well, I believe in our mission. I believed in  
21 what was going on. I was pleased with the -- the sales  
22 proceeds bonus, as a matter of the oral consummating to  
23 the written, so forth. But I was impressed that Brian  
24 took the time to hop on a plane to come out and talk to  
25 me individually.



1 Q. Now, as we sit here today, you wish you'd ruined  
2 one of those clothe napkins?

3 A. Yes.

4 Q. Okay. But at the time -- at that time, you --  
5 you decided to trust Brian?

6 A. Yes, ma'am.

7 Q. Okay.

8 A. He mentioned he'd have it to me in a couple of  
9 days.

10 MS. GIBSON: Your Honor, I'm going to need  
11 to approach?

12 THE COURT: Okay.

13 (Off-the-record discussion.)

14 Q. (By Ms. Gibson) Now, Mr. Carpenter, did you --  
15 did Brian Potashnik also have some talk in the presence  
16 of you and Sara Reidy about memorializing deals in  
17 writing?

18 A. We had that conversation, but I don't believe it  
19 was covered that evening.

20 Q. Okay. So at some other point, did Brian  
21 Potashnik meet with two or three of you about  
22 memorializing --

23 A. Yes.

24 Q. -- the deal?

25 A. Cheryl and Brian met with Keith, Sara and myself

1 in Cheryl's office and told us that.

2 MR. FRIEDMAN: All right. Can we approach,  
3 Your Honor?

4 Q. (By Ms. Gibson) Told us --

5 MR. FRIEDMAN: Can we approach?

6 Q. (By Ms. Gibson) Told us you could do what?

7 THE COURT: Approach.

8 (Off-the-record discussion.)

9 Q. (By Ms. Gibson) All right. Mr. Carpenter, I'm  
10 handing you what's been marked as Plaintiff's Exhibit 50.  
11 Do you recognize Exhibit 50 as a  
12 January 17, 2007, e-mail to you from Keith Jones?

13 A. Yes. But it's in a much different font, so  
14 I'm -- I'm assuming that the content is the same.

15 Q. I --

16 MR. FRIEDMAN: Well, let me take the witness  
17 on voir dire, Your Honor. He recognize it or not.

18 THE COURT: Cross-examination, he said he  
19 recognized it.

20 THE WITNESS: It -- it appears to be.

21 Q. (By Ms. Gibson) Okay. The font just looks a  
22 little strange?

23 A. Yeah, the font's totally different.

24 Q. Okay.

25 MR. FRIEDMAN: Your Honor --

1 MS. GIBSON: And Plaintiffs offer  
2 Exhibit 50.

3 MR. FRIEDMAN: -- I think voir dire would be  
4 appropriate. I mean, the subject says amendment to  
5 employment agreement to a blank document and what's  
6 attached is not a blank document.

7 THE COURT: Okay. Overruled. But your --  
8 we'll put your substantive objection and that objection  
9 too on the record at a later time.

10 MR. FRIEDMAN: Okay. Thank you.

11 THE COURT: 50 is admitted.

12 (Plaintiff's Exhibit No. 50 is admitted.)

13 MR. FRIEDMAN: 50?

14 THE COURT: 50.

15 Q. (By Ms. Gibson) So on January 17, 2007, Keith  
16 Jones is sending you a form for what?

17 A. It was --

18 Q. Why is he sending you a form?

19 THE COURT: The question is: What is the  
20 form for, not --

21 MR. FRIEDMAN: The purpose of the form.

22 THE WITNESS: The purpose of the form was we  
23 were informed to try to expedite memorializing each  
24 individual severance bonus program, whatever you want to  
25 call it. We don't know who -- anything about each

1 other's.

2 Q. (By Ms. Gibson) Okay.

3 A. Keith was using --

4 Q. Okay. Well --

5 MR. FRIEDMAN: This is exactly what --

6 MS. GIBSON: No further --

7 THE COURT: Okay.

8 MR. FRIEDMAN: This is --

9 MS. GIBSON: No further on that.

10 THE COURT: Let her ask the questions.

11 MR. FRIEDMAN: She needs to follow your  
12 instructions.

13 THE COURT: Okay. Let her ask the question.  
14 Answer only the questions she's asking you,  
15 Mr. Carpenter.

16 THE WITNESS: Yes, sir.

17 Q. (By Ms. Gibson) Okay. And so ultimately, did  
18 you end up using this form?

19 A. I used this form as the basis, yes.

20 Q. Okay. And if you look at the form, you see in  
21 Paragraph 2 --

22 A. Yes, ma'am.

23 Q. -- it says -- the form says, "Without  
24 withholding or deduction of any kind" --

25 MR. FRIEDMAN: Your Honor --

1 Q. (By Ms. Gibson) -- "and without" --

2 MR. FRIEDMAN: -- I would object to this as  
3 hearsay. This is not offered for the truth of the matter  
4 asserted. This is only offered for the purpose that a  
5 form was transmitted.

6 MS. GIBSON: Your Honor, there's --

7 THE COURT: If it's not offered for the  
8 truth of the matter asserted, it's not hearsay.

9 MS. GIBSON: And it -- it's a contract. It  
10 doesn't have facts, do this, do that.

11 MR. FRIEDMAN: This is not a contract. It's  
12 a form --

13 MS. GIBSON: I'm sorry.

14 MR. FRIEDMAN: -- and it's what's in the  
15 form is not true, it's just a form.

16 THE COURT: Objection's overruled. And  
17 that's her point, is that it's a form.

18 Q. (By Ms. Gibson) So in this form that you were  
19 provided, part of it says, "Without deduction for any  
20 compensation paid to any other employees of any of the  
21 employer entities."

22 You see that?

23 A. Yes, ma'am.

24 Q. Okay. Now, that was not your -- you were having  
25 deductions --

1 MR. FRIEDMAN: Your Honor, I'm not going to  
2 let her lead.

3 Q. (By Ms. Gibson) Were --

4 MR. FRIEDMAN: I'm not going to let him  
5 lead -- her lead through this.

6 THE COURT: Okay.

7 Rephrase your question.

8 You said --

9 MR. FRIEDMAN: Leading.

10 THE COURT: Sustained.

11 Rephrase your question.

12 MS. GIBSON: Sure.

13 Q. (By Ms. Gibson) Is that statement accurate for  
14 your handshake deal?

15 A. No, ma'am.

16 Q. Okay. But -- in ultimately using the form, did  
17 you pick up that language?

18 MR. FRIEDMAN: Leading.

19 THE COURT: It's not leading.

20 MS. GIBSON: It's not leading.

21 MR. FRIEDMAN: She suggested the answer,  
22 Your Honor.

23 THE COURT: You have to have -- your  
24 objection is overruled.

25 THE WITNESS: Would you mind repeating?

1 Q. (By Ms. Gibson) Okay. In ultimately using the  
2 form that Keith Jones provided to you, did -- did that  
3 language get picked up?

4 A. No. I --

5 Q. You --

6 MR. FRIEDMAN: Nothing after no is  
7 responsive.

8 Q. (By Ms. Gibson) So -- so --

9 A. I used that language and I shouldn't have --

10 Q. Okay.

11 MS. GIBSON: Go ahead.

12 THE COURT: Ask your question.

13 MS. GIBSON: Okay.

14 Q. (By Ms. Gibson) Did you accidentally pick up  
15 this language when you were using this form?

16 A. Yes, ma'am.

17 Q. But as far as your discussions with Brian  
18 Potashnik, did the formula remain the same?

19 A. (No response.)

20 Q. As far as your oral discussions with Brian  
21 Potashnik?

22 A. Yes.

23 Q. Okay. And so Brian -- Brian knew what your  
24 formula was?

25 A. Yes, ma'am.

1 Q. And then -- but before -- before you decide to  
2 use Keith Jones' document -- and I'm just going to write  
3 this while I ask you the question. I'm going to write  
4 this e-mail up here while I ask you this question. Okay.

5 A. Okay.

6 Q. Don't think I'm writing about this question.

7 After this, though, before you decided to  
8 use this form, did you try to find an attorney to write  
9 it down?

10 A. Yes, I did.

11 Q. Okay. And who -- who'd you first talk to about  
12 finding someone who might be able to do that?

13 A. It was our tenant landlord attorney -- oh,  
14 gosh -- Greg --

15 Q. It's okay if you don't remember his name.

16 A. It may be Mallar (phonetic), I can't remember  
17 his last name for sure.

18 Q. Okay. And --

19 A. It's in my phone.

20 Q. -- and he -- to give you the names of a few  
21 attorneys?

22 A. Yes, ma'am.

23 Q. Okay. And who did you ultimately talk to?

24 A. I spoke to Mr. Will Hartsfield.

25 Q. Okay.



1 THE COURT REPORTER: I'm sorry. Could you  
2 repeat the name?

3 THE WITNESS: Mr. Will Hartsfield.

4 Q. (By Ms. Gibson) And how long -- well, did you  
5 have an understanding of Will Hartsfield's background,  
6 professional background?

7 A. That he was a very sophisticated and Harvard-ish  
8 in employment law attorney.

9 Q. Okay. And after meeting with Mr. Hartsfield  
10 about trying to get him to maybe document the deal, what  
11 was your feeling about using Mr. Hartsfield to do it?

12 A. It was just way too complicated and it would  
13 have been a book so...

14 Q. Okay.

15 A. I did not use him.

16 THE COURT: If you're coming to a different  
17 subject, we still have that second -- that last  
18 ten-minute break.

19 MS. GIBSON: Okay. Well, this is a good  
20 time. Sure.

21 THE COURT: All right. We'll take a  
22 ten-minute break, ladies and gentlemen.

23 THE BAILIFF: All rise.

24 (Jury ushered out.)

25 (Break was taken.)

1 THE BAILIFF: All rise.

2 (Jury ushered in.)

3 THE COURT: Everybody have a seat, please.

4 Have a seat, Mr. Carpenter.

5 THE WITNESS: Thank you.

6 THE COURT: Welcome back, ladies and  
7 gentlemen. We'll continue with the trial and we'll go up  
8 until around 4:30 or so before we stop for the day.

9 Ms. Gibson, if you'd pick up where you left  
10 off.

11 MS. GIBSON: Sure.

12 DIRECT EXAMINATION (cont'd)

13 BY MS. GIBSON:

14 Q. Mr. Carpenter, when did you meet with Will  
15 Hartsfield --

16 A. March --

17 Q. -- to document your deal?

18 A. -- March 7th, 2007.

19 Q. Okay. I'm handing you what's been marked  
20 Plaintiff's 51. Ignore this, please (pointing). Okay.

21 A. Okay.

22 Q. And with respect to the 3-percent handshake  
23 deal, what generally were you asking Mr. Hartsfield to  
24 do? What'd y'all talk about on the 3 percent deal?

25 A. Well, I told him -- pardon me. I told him about

1 our handshake deal, gave him the particulars, the formula  
2 and so forth and walked -- walked through the process of  
3 the deal.

4 Q. And although you -- you didn't -- Will  
5 Hartsfield didn't end up documenting the deal?

6 A. No, ma'am.

7 Q. Okay. And why was -- you know, how did that  
8 come about? Why? As far as what y'all discussed.

9 A. He -- Will being very thorough, he was throwing  
10 all different types of language of if I die and --

11 MR. FRIEDMAN: I'm going to --

12 THE WITNESS: -- just a whole bunch of legal  
13 stuff that I --

14 MR. FRIEDMAN: -- object to anything that  
15 Hartsfield says as being hearsay.

16 THE COURT: Don't tell us what  
17 Mr. Hartsfield said.

18 But repeat your question.

19 And answer whatever her question was.

20 MS. GIBSON: Okay.

21 Q. (By Ms. Gibson) And at the end of the -- you  
22 know, after you met with Mr. Hartsfield, he gave you  
23 notes that he took about your 3-percent deal?

24 A. Yes.

25 Q. Okay.

1 A. Yes, it was documented.

2 Q. Okay. Whose handwriting is on Exhibit 51?

3 A. Mr. Hartsfield.

4 Q. Okay. And that's what was given to you --

5 A. Yes, ma'am.

6 Q. -- on the 3-percent deal?

7 A. Yes, ma'am.

8 Q. Okay.

9 MS. GIBSON: Plaintiffs offers Exhibit 51.

10 MR. FRIEDMAN: I've seen this, Judge. It  
11 has no name on it, no date or anything like that, white  
12 piece of paper, not on a stationary. So lack of  
13 foundation, hearsay, unauthenticated and best evidence  
14 rule.

15 THE COURT: That's not --

16 MR. FRIEDMAN: You want to look at it?

17 THE COURT: No, I saw it. Move forward.

18 MS. GIBSON: Your Honor, we're not offering  
19 it for the truth of the matter. It's simply the notes on  
20 the 3-percent deal that Will Hartsfield gave to  
21 Mr. Carpenter.

22 THE COURT: All right. And, ladies and  
23 gentlemen, you can consider the document as being a copy  
24 of the document that Mr. Hartsfield gave Mr. Carpenter  
25 and not for the truth of the matter asserted therein.

1 (Plaintiff's Exhibit No. 51 is admitted.)

2 MR. FRIEDMAN: Based on what Mr. Carpenter  
3 told Mr. Hartsfield not to document.

4 THE COURT: You said based on what  
5 Mr. Carpenter not to document?

6 MR. FRIEDMAN: What Mr. Carpenter told  
7 Mr. Hartsfield not to document. He had a chance to have  
8 a lawyer document it and didn't.

9 THE COURT: Okay. That's your cross-  
10 examination.

11 Q. (By Ms. Gibson) All right. Since -- since  
12 Mr. Friedman just made that comment, Mr. Carpenter, let's  
13 talk about that for a quick moment. Well, no, we'll  
14 cover it in this.

15 Okay. And so the first line of these notes  
16 say, "Since May of last year"?

17 A. (No response.)

18 Q. Yes?

19 A. Yes.

20 Q. Okay. "Owns earned bonus" or "owes earned  
21 bonus"?

22 A. Yes.

23 Q. Okay. And then it also says, "1,000,000," and  
24 "simplier the better"?

25 A. Yes.

1 Q. Okay. With respect to "simplier the better,"  
2 how quickly did you want this deal memorialized?

3 A. I was hoping to have it in a day or two from  
4 Mr. Hartsfield.

5 Q. And after talking with him, what was your  
6 impression about whether it would be simple?

7 A. It would not be simple and it would not be near  
8 that time frame.

9 Q. Okay. Did you anticipate it would be worst than  
10 what Mr. Friedman has talked about, that you submitted to  
11 the Potashniks ultimately? Even worse than that?

12 A. My -- my attorney skills -- I'm sure his  
13 document would have been very thorough and very expensive  
14 and much better than what I submitted in my --

15 Q. Okay. But not -- but you were looking for  
16 simple?

17 A. Yes.

18 Q. Okay. And what -- what is the next line?  
19 'Cause I have no idea. Do you know what that is?

20 A. I don't know --

21 Q. Okay.

22 A. -- unless he's abbreviating something. I don't  
23 know.

24 Q. Okay. Then there's something about a car  
25 accident. That -- that doesn't have anything to do with

1 your 3-percent deal?

2 A. Well, he was considering if we write up and if  
3 you were in a car accident, type of scenario.

4 Q. Oh, what if -- oh, okay. All kinds of  
5 possibilities?

6 A. Yes.

7 Q. All right. What if you're in a car accident?

8 A. Yeah, all the what-ifs.

9 Q. Okay. There's a sale of the company and  
10 discussion of who stays.

11 And then can you help me out with the next  
12 line, "sale price," what?

13 A. The sale price and -- I would -- I don't know if  
14 it's a six, I don't know if it's a one in there.

15 Q. Okay.

16 A. What it is --

17 Q. It looks like 36 M?

18 A. Yeah.

19 Q. Okay.

20 A. That would have been correct.

21 Q. And then it says, "3 percent about a million"?

22 A. Yes, ma'am.

23 Q. Car accident again. And then it says,  
24 "Restructured."

25 What was -- was that about the 3 percent

1 or --

2 A. I don't -- I don't recall.

3 Q. Okay. And then the next line just says,

4 "Selling interest in real estate"?

5 A. That -- it was a footnote to him, I -- I'm  
6 assuming.

7 Q. And then, "no job for him"?

8 A. Yes. I told him my story that I would be out of  
9 employment at the end of my deal.

10 Q. Because Rick Graf is already there?

11 A. Yes, ma'am.

12 Q. Okay. Okay. And during your discussions with  
13 Will Hartsfield or at least some time close to your  
14 meeting, it came -- it somehow came to your attention  
15 that your written employment agreement has a severance --  
16 termination severance provision?

17 A. Yes, ma'am.

18 Q. Okay. So at around this time frame, you -- you  
19 were going to potentially address that and -- when  
20 memorializing the document?

21 A. Yes.

22 Q. Okay. But prior, you know -- before all of this  
23 is happening, had you ever even thought about looking at  
24 your employment agreement on the -- on the 3-percent  
25 deal?



1 A. No.

2 Q. Mr. Carpenter, I'm handing you Plaintiff's 52.

3 THE COURT: You got to walk around the court  
4 reporter.

5 MS. GIBSON: I apologize.

6 MR. FRIEDMAN: Thank you.

7 Q. (By Ms. Gibson) Do you recognize Exhibit 52 as  
8 an e-mail from -- from yourself to your work e-mail  
9 address at Southwest Housing?

10 A. Yeah. Notes to myself, yes.

11 Q. Okay. And then there are also notes to discuss  
12 on the next two pages --

13 A. Yes.

14 Q. -- as part of the e-mail?

15 A. Yes.

16 Q. Okay.

17 MS. GIBSON: Plaintiff offers Exhibit 52.

18 THE COURT: Any objection?

19 MR. FRIEDMAN: Just one minute, Judge.

20 THE COURT: All right.

21 MR. FRIEDMAN: Has something been redacted  
22 from this document, Your Honor?

23 THE WITNESS: I don't think it printed  
24 correctly.

25 MS. GIBSON: No, no. Actually the first

1 time I only printed the first page, not realizing there  
2 was more to it. It's just the way it is.

3 MR. FRIEDMAN: Give us one second to make  
4 sure it's not violating the limine.

5 THE COURT: All right.

6 MR. DONOHUE: Your Honor, there are at least  
7 two entries we see that violate the limine order.

8 THE COURT: Georgina, we'll hold off on  
9 Exhibit 52.

10 (Sotto voce discussion.)

11 Q. (By Ms. Gibson) Mr. Carpenter, would you put 51  
12 aside for now.

13 A. (Witness complies.)

14 MR. FRIEDMAN: 52.

15 THE COURT: 52.

16 THE WITNESS: 52.

17 Q. (By Ms. Gibson) 52, I'm sorry.

18 A. Yes, I gave it to the judge, Your Honor.

19 Q. And without getting into any details,  
20 Mr. Carpenter, as to specific people or -- or anything  
21 like that, did Brian Potashnik ask you to help identify  
22 key or important employees that reported to you?

23 A. Yes.

24 Q. Okay. And did he -- and what was -- and did he  
25 ask you to help with the -- whether you call it a stay

1 severance bonus program or pay-to-stay bonus program, did  
2 he ask you to participate in that for people that  
3 reported to you?

4 A. Yes, he suggested it --

5 Q. Okay.

6 A. -- and made some suggestions.

7 Q. And made some -- and did you talk to Brian  
8 Potashnik periodically about that process for those  
9 employees?

10 A. We -- we spoke about it --

11 Q. I don't want you to get into details, but --

12 A. We spoke about that day and we followed up on  
13 it.

14 Q. Okay. And ultimately, after you met with Will  
15 Hartsfield about trying to memorialize your deal --

16 A. Yes, ma'am.

17 Q. -- when's the next time after March 7th that you  
18 met with Brian Potashnik?

19 A. That'd been March 14th.

20 Q. And, please, tell me if I accidentally get a  
21 year wrong when I'm writing.

22 Where do you and Brian meet?

23 A. I believe it was a Wednesday, we met at, I  
24 believe, 7 o'clock, Cobies.

25 Q. Okay. And what'd y'all talk about?

1           A.    I had a laundry list.  The document that was  
2 taken away, Exhibit 52 --

3           Q.    Don't -- don't talk about that.

4           A.    I can't talk about that?

5           Q.    Please don't.  No.

6           A.    Okay.  I had a list of business and personal  
7 concerns, as well as following up on the status of the  
8 business issues, earned bonus, you know -- payment of  
9 earned bonuses, as well as the 3 percent.  Those were the  
10 three biggies for me.

11          Q.    Okay.  So you talked about the 3 percent and  
12 overdue annual bonuses?

13          A.    Right.

14          Q.    Turning to the annual bonuses for a moment.

15                   Did Brian Potashnik at some point, did he --  
16 did the Potashniks ever come back with a final total on  
17 what you were owed in past due annual bonuses, the final  
18 total?

19          A.    Brian came back with 400.

20          Q.    Well, what -- but, I mean, at some point had you  
21 asked them to take a look at what you thought you had  
22 earned?

23          A.    Yes, I gave a recommendation.

24          Q.    Okay.  And what did they say in response?

25          A.    I will get back to you in a couple of days.

1 Q. Okay. And did they ever do that?

2 A. No.

3 Q. Okay. So on the annual bonuses, though, some  
4 point you said Brian did give you some numbers?

5 A. Yes.

6 Q. Okay. So when you and Brian were talking about  
7 annual bonuses in years not covered under your employment  
8 agreement, meaning after year one --

9 A. Yes, ma'am.

10 Q. -- what range had y'all operated under, if you  
11 did at all? What was the range y'all had discussed?

12 A. From 50 to 200.

13 Q. Okay. And so did that range ever change as far  
14 as your oral discussions about annual bonuses as to what  
15 you were working with?

16 A. No, 'cause I never got feedback from my written.  
17 So orally that's it.

18 Q. All right. That was -- you -- that's the range  
19 y'all always discussed --

20 A. Yeah.

21 Q. -- on oral?

22 Okay. And did Brian Potashnik ever  
23 acknowledge to you while you were working that annual  
24 bonuses were earned and past due?

25 A. Yes.

1 Q. Okay. Did Brian Potashnik ever talk to you  
2 about catching up?

3 A. Yes.

4 Q. And what did Brian Potashnik tell you about  
5 trying to catch up with you on past due annual bonuses?

6 A. There was a couple of properties that were ready  
7 to close in permanent financing, bringing -- developer  
8 fees, there was --

9 Q. Okay. Let's -- let's talk --

10 A. It's in -- it's in four parts.

11 Q. Okay. So he'd catch up on developer fees -- I  
12 mean, I'm sorry. From developer fees?

13 A. Right, sources.

14 MR. FRIEDMAN: I'm not hearing him.

15 MS. GIBSON: Sources.

16 THE WITNESS: Sources.

17 MR. FRIEDMAN: Thank you.

18 Q. (By Ms. Gibson) Okay. It looks like I spelled  
19 fancy catch up, but that's catch up. Added developer  
20 fees.

21 What else did he tell you?

22 A. The McKinney land sale, \$50,000.

23 Q. And is -- you said the McKinney land what?

24 A. Sale.

25 Q. Sale.

1                   And is this another -- is this also a  
2 source --

3           A.    Yes.

4           Q.    -- to catch up from?

5                   Okay.  And what else?

6           A.    50,000 for Fair -- Fair Way Apartments.

7           Q.    And is that also a source --

8           A.    Yes, ma'am.

9           Q.    -- from which he's going to catch up?

10          A.    Yes, ma'am.

11          Q.    And what -- what else?

12          A.    And then he gave a range of 100 to 200,000 from  
13 the Vegas property.

14          Q.    Okay.  And was trying to catch up on past due  
15 annual bonuses from the McKinney and Fair Way and Vegas  
16 deals, separate from him telling you he would catch up  
17 on -- out of developer funds?

18          A.    Those were four sources of funds that were  
19 anticipated to come in shortly.

20          Q.    Okay.  And so what -- what number are you --  
21 what -- what number do we put here for catching up out of  
22 developer?

23          A.    I'm not sure.

24          Q.    Okay.  Did you understand that there was a  
25 minimum?

1 A. Yes.

2 Q. Okay. What was the minimum?

3 A. Fifty --

4 Q. Okay.

5 A. -- thousand.

6 Q. And they paid you 50,000 in year one, right?

7 A. Correct.

8 Q. Okay. And so we're talking about year two and  
9 year three?

10 A. At that time, yes.

11 Q. Okay. And so the minimum there would be what?

12 A. 100 or --

13 Q. Okay.

14 A. 100 there.

15 Q. And you -- you said, "developer funds."

16 Can you explain what that source is?

17 A. Once the -- the property hit stabilization and  
18 other benchmarks and it goes to permanent financing,  
19 depending on how the deal is structured, there's --  
20 that's when the developer gets payment in some deals and  
21 depending on some others. But that's when their income  
22 comes in from the property.

23 Q. Okay. And is that also called "developer fees"?

24 A. Yes.

25 Q. Okay. And so was the catch up from developer



1 fees separate from trying to catch up in these amounts,  
2 at least starting from these other sources?

3 A. That was my understanding.

4 Q. Okay. Going back to your meeting on  
5 March 14th, 2007, what was Brian Potashnik's reaction?  
6 What did he say in response to you discussing  
7 the 3-percent handshake deal and overdue annual bonus  
8 payments?

9 A. He -- he -- he understood. I mean, I had the  
10 notes, we walked through those. And it was -- I don't  
11 want to say it was affirmative, like, yesterday the okay  
12 issue. But we went through everything. And he said,  
13 Well, let me have a day or two to -- to analyze it and  
14 I'll get back to you.

15 Q. Okay.

16 A. And that -- it was a long -- it was a full page  
17 list of items.

18 Q. Okay. And you -- you dropped off with Brian  
19 Potashnik certain documents?

20 A. Yes.

21 Q. Okay. Without saying what the details of them  
22 were, one was your effort to memorialize the deal?

23 A. Yes, ma'am.

24 Q. Okay. And you used the form that Keith Jones  
25 gave you?

1 A. Yes, ma'am.

2 Q. And -- and attorney -- attorney Ms. -- or  
3 Mr. Internet? Did you use the Internet as well?

4 A. I don't believe so, but --

5 Q. Okay.

6 A. -- who knows. I don't believe so.

7 Q. All right. And you dropped off some notes with  
8 them?

9 A. Yes.

10 Q. And the third item you dropped off with him was  
11 spreadsheets as to what you thought was owed on earned  
12 bonuses?

13 A. Earned bonuses, you know -- it was earned  
14 bonuses as well as any pay increases, based on  
15 performance if we get into that discussion.

16 Q. Okay.

17 A. Since there hasn't been any review of any type  
18 and we were behind.

19 Q. And the -- the purchase at this point in time  
20 how close do you think -- or as far as your recollection,  
21 how close did you feel y'all were to final purchase and  
22 sale agreement and closings to start happening?

23 A. I believe the purchase sales agreement was  
24 signed in April. Brian stopped by and gave me a draft  
25 copy to -- to peruse beforehand so it was -- it was

1 nearing quickly.

2 Q. And at some point, did Brian and Cheryl talk to  
3 you about staying all the way through closing? I  
4 don't -- and I'm not saying in this time frame. I'm  
5 saying ever, had they talked to you about staying on all  
6 the way through closing?

7 A. It was -- no.

8 Q. When -- so by now, though, you know and Brian's  
9 told you that you're not going to have a job with the  
10 purchaser and you don't think the close is about to  
11 happen.

12 So are you looking for a job?

13 A. Yes. I was getting calls and as -- from search  
14 firms, as well as contacts out in the business arena?

15 Q. All right. And you saw the video deposition of  
16 Jeff Richards this morning?

17 A. Yes, ma'am, with American Housing Foundation.

18 Q. Okay. And he was one of the people that  
19 recruited you to go over to American Housing?

20 A. Yes. He was my first contact. He mentioned I  
21 was referred by a group in Denver, who was Lockton  
22 Insurance, but we got brought into Southwest --

23 Q. Okay.

24 A. -- and used in the past.

25 Q. And when was your first meeting with Jeff

1 Richards?

2 A. I believe it was April 24th.

3 Q. Okay. So 04/24/of '07 is first meeting with  
4 Jeff Richards.

5 And did you agree with Jeff Richards that  
6 y'all hit it off early on?

7 A. Personalities, we -- we hit it on very good.  
8 I -- I liked Jeff. I mean, philos -- his business  
9 philosophy, his personal philosophies -- faith based.  
10 American Housing Foundation was a 501(C)3, so it was  
11 taking what we were already doing at Southwest Housing  
12 and putting some more sugar on it --

13 Q. Okay.

14 A. -- as well as through that program.

15 Q. And do you agree with Jeff Richards when he  
16 testified that they -- they wanted you to come on over  
17 pretty early?

18 A. Yes, they did.

19 Q. Okay. And you did not agree to take the job,  
20 did you?

21 A. That's correct.

22 Q. Okay. Why didn't you immediately go over to  
23 Affordable Housing -- no. What's it called American --

24 A. American Housing Foundation.

25 Q. Thank you. American Housing Foundation.

1                   Why did you not go over immediately?

2           A.    Due to the oral agreement of 3 percent and as  
3 well as getting paid for the back earned bonuses. I was  
4 a **man of my word**. I said I would, you know, stay and be  
5 committed and I was -- wasn't willing to walk away from  
6 that and walk away from Brian and Cheryl because there  
7 was a lot going on in addition to just selling the  
8 property.

9           Q.    And was your base salary at Jeff Richards'  
10 company going to be higher, lower or the same as what you  
11 were earning at Southwest Housing Management?

12          A.    It was -- it was higher, quite substantially.  
13 Do you want the number?

14          Q.    Well, I was talking about this -- I'm just  
15 talking about salary, not the whole compensation package.

16          A.    My salary was 259,000 a year, plus --

17          Q.    Okay. At Jeff Richards' company?

18          A.    Yes.

19          Q.    Okay.

20          A.    Plus a very detailed four-part bonus program.

21          Q.    Okay. And if -- if you set aside the 3-percent  
22 handshake deal -- because obviously that was worth a  
23 lot -- and just compared the salary and bonus structure  
24 at Southwest Housing Management and the salary and bonus  
25 structure at Jeff Richards' company, which was the higher

1 comp package?

2 A. Oh, American Housing Foundation by far.

3 Q. And so was there -- if you -- if you weren't  
4 expecting a large stay bonus, would there be any reason  
5 for you not to go over to Jeff Richards --

6 A. No --

7 Q. -- company?

8 A. -- I would have left -- I would have left.

9 Q. And then while all this is going on, are things  
10 really busy still at the company?

11 A. Yes, very busy.

12 Q. Okay. And can you -- can you give us just the  
13 nutshell, short version of, you know, kind of what was  
14 going on that was still keeping y'all really busy in this  
15 time frame?

16 A. Besides the normal course of business with  
17 additional new product coming on line from development  
18 and construction, we're still dealing with Katrina, Rita  
19 on a daily basis, working hand in hand with city  
20 governments and FEMA, trying to get paid was a big chore.  
21 Plus the due diligence, starting up at that point in time  
22 for the -- because the PSA was signed, I believe, at the  
23 end of April and we -- we were already preparing for  
24 that. So once it was signed, we -- we started and it was  
25 very meticulous.

1           Q.   And with respect to due diligence, without  
2 getting into the details of what people have to do for  
3 due diligence, can you just give us a bird's-eye view of  
4 how much had to be covered -- how much area had to be  
5 covered as far as due diligence? In other words, as far  
6 as -- where was due diligence taken place?

7           A.   A wide variety. Not only just on management, I  
8 mean, the accounting was affected. A lot of accounting  
9 reports, past histories from Sara, development, finance,  
10 you know, projections and the status of the deal from the  
11 general make up of -- from day one, what's the -- the  
12 evolution of that property.

13                       On the management side, we had tons of  
14 physical inspections for fair housing, for accessology,  
15 different types of permits that were required. They were  
16 exceptionally thorough. I believe, there was  
17 probably 17, 18 different types of due diligence details  
18 that needed middle management to site-level management  
19 assistance or walk-through and directions. We had a -- a  
20 lot of physical inspections in the apartments of the  
21 residents and we had to obviously mentor them properly as  
22 well.

23           Q.   Okay. What do you mean by, mentor the residents  
24 properly?

25           A.   Well, keep them comfortable.

1 Q. Okay.

2 A. You know, they -- you know, people -- as Mark  
3 Jones mentioned, people get concerned about a sale. We  
4 had a very good product. We were all very proud of it  
5 and people do get concerned as -- from employees, as well  
6 as the residents. And we needed to continue to go  
7 upwards, not any dips along the way.

8 Q. And at some point in time, was there a leak?

9 A. (No response.)

10 Q. To -- a leak of the purchase before formal  
11 announcement?

12 A. Yes. I -- there -- there was a leak. I mean,  
13 when you have that many people involved, you -- you could  
14 only give so many stories of why there's so many  
15 inspections so forth. I believe there was an  
16 announcement that I wrote with Brian, Cheryl,  
17 collaborated on something about -- I think it was in  
18 September-ish, early September of a potential --

19 Q. Okay. And --

20 A. -- I -- excuse me. I don't remember if that was  
21 just to the employees or to the residents or both. We  
22 did have -- every time you go into a residents'  
23 apartment, you have to give them notification.

24 Q. And, Mr. Carpenter, rather than having you look  
25 through the exhibits, I'm just going to give you my copy



1 of Exhibit 12.

2 Can you tell me what the actual date was on  
3 the purchase and sale agreement?

4 A. April 30th, 2007.

5 Q. Okay. And then in addition, on top of the due  
6 diligence issues, were you personally still working with  
7 Mike Uhl, responding to -- responding to provide  
8 documents in connection with the criminal investigation?

9 A. Yes, ma'am.

10 Q. Okay. So that's still going on?

11 A. Yeah. The first subpoena we sent, the second  
12 subpoena came in, you know --

13 Q. Okay.

14 A. The last -- the last delivery of documents -- I  
15 think, there was four legal cases and it was delivered to  
16 them on April 24th. I finished it.

17 Q. You --

18 A. We delivered the last of the documents --

19 MR. FRIEDMAN: There's no question before  
20 the witness, Your Honor.

21 Q. (By Ms. Gibson) Okay. And did you --

22 MR. FRIEDMAN: I'm going to object as being  
23 nonresponsive.

24 Q. (By Ms. Gibson) Did you--

25 THE COURT: Okay. Break up your questions.

1 Q. (By Ms. Gibson) Did you say -- I'm sorry. Did  
2 you say you finished on April 24th or is that when Mike  
3 Uhl requested some more documents --

4 MR. FRIEDMAN: Leading --

5 Q. (By Ms. Gibson) -- or both?

6 MR. FRIEDMAN: -- and asked and answered.  
7 He said, April 24th.

8 THE COURT: Overruled.

9 Just clarify.

10 THE WITNESS: Let me do clarify. That was  
11 when we were noted of the second subpoena.

12 Q. (By Ms. Gibson) Okay. And so that work was --  
13 that additional work was starting --

14 A. Yes, ma'am.

15 Q. -- in this time frame as well?

16 When is -- when is the next time you met  
17 with Brian about your handshake deal?

18 A. We met on May 14th of 2007 --

19 Q. Okay.

20 A. -- at Cindi's New York Deli restaurant,  
21 breakfast meeting.

22 Q. How do I spell Cindi's? I've been there.

23 A. C-I-N-D-Y, apostrophe, S (sic).

24 Q. Oh, okay. What -- what did you-all discuss at  
25 that -- at that meeting, with respect to your deal?

1           A.    We spoke about both sides catching up on the  
2   FBI, everybody was going, as far as sales transaction,  
3   they had not gotten to the written confirmation or  
4   memorializing yet.  And surprisingly Brian changed our  
5   oral agreement, which I became very angry about, saying  
6   that the 3 percent included my past earned bonuses for  
7   the first time.

8           Q.    Okay.  And what -- so what'd you tell Brian?

9           A.    I said, It's -- I slammed my hand on the table  
10   and I said, It's completely unacceptable.  It was not  
11   part of the deal.  And he said, You know, there's another  
12   person in the office that needs to bless it.  He said,  
13   Cheryl.  And he said, If you want to get in our cars  
14   right now and go meet with Cheryl, we'll go do so.  We  
15   paid the check, we left to go to Cheryl's office to clear  
16   the air, so to speak.  I showed up, Brian --

17          Q.    Okay.  Stop there and I'll ask another question.

18          A.    Sorry.

19          Q.    It's okay.  This is -- this is not normal --

20          A.    Okay.

21          Q.    -- the way this works.

22                   And so then -- so do you and Brian -- how  
23   did y'all leave it?  Where are you headed?  How do you  
24   separate at Cindi's?

25          A.    We were -- we were headed back to the corporate

1 office and we were going to meet up with Cheryl in her  
2 office and --

3 Q. And what happened next?

4 A. And Brian didn't show back up to the office and  
5 Cheryl tried calling him. And ultimately, we sat up a  
6 time to meet on two days later, on May 16th. The three  
7 of us in Cheryl's office.

8 Q. So that -- so on May 16th in Cheryl's office --  
9 and y'all meet to try to resolve the situation --

10 MS. GIBSON: Well, Your Honor, this meeting  
11 may take a while to talk about and I think you wanted to  
12 end at 4:30?

13 THE COURT: Right. You're exactly right.

14 Ladies and gentlemen, we'll stop for the  
15 day. Please remember the instructions I gave you  
16 previously. We'll see you Monday morning at 9 o'clock.  
17 We wish you a good afternoon.

18 THE WITNESS: Thank you, sir.

19 THE BAILIFF: All rise.

20 (Jury ushered out.)

21 THE COURT: Okay. We are on the record, but  
22 outside the presence of the jury. During the course of  
23 Mr. Potashnik's testimony, Ms. Gibson approached the  
24 Court sidebar and wanted to -- and said she wanted to go  
25 ask him questions about oral agreements with other

1 THE STATE OF TEXAS )  
 2 COUNTY OF DALLAS )

3 I, Georgina Ware, Deputy Official Court  
 4 Reporter in and for the County Court at Law No. 5 of  
 5 Dallas County, State of Texas, do hereby certify that the  
 6 above and foregoing contains a true and correct  
 7 transcription of all portions of evidence and other  
 8 proceedings requested in writing by counsel for the  
 9 parties to be included in this volume of the Reporter's  
 10 Record, in the above-styled and -numbered cause, all of  
 11 which occurred in open court or in chambers and were  
 12 reported by me.

13 I further certify that this Reporter's  
 14 Record of the proceedings truly and correctly reflects  
 15 the exhibits, if any, admitted by the respective parties.

16 I further certify that the total cost for  
 17 the preparation of the Reporter's Record is \$ **1365.80** and  
 18 was paid/will be paid by **FRIEDMAN & FEIGER**.

19 WITNESS MY OFFICIAL HAND this the 20th day  
 20 Of October, 2018.

21 /s/ Georgina Ware

22 GEORGINA WARE, Texas CSR 8436  
 23 Expiration Date 12/31/18  
 24 Deputy Official Court Reporter  
 25 County Court at Law No. 5  
 Dallas County, Texas  
 P.O. Box 3821  
 Cedar Hill, Texas 75106  
 (214) 586-2862

Georgina Ware  
 Certified Shorthand Reporter

Appendix 0991

REPORTER' S RECORD

VOLUME 6 of 14

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
04/29/2019 6:14:22 PM

Trial Court Cause No. CC-08-02072-E

JEFFREY W. CARPENTER,

) IN THE DALLAS COUNTY  
) Clerk

Pl a i n t i f f ,

VS

) COURT AT LAW NO. 5

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC. , ET AL,

Defendants.

) DALLAS, TEXAS

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TRIAL ON THE MERITS

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On the 29th day of January, 2018, the following proceedings came on to be heard within the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the HONORABLE MARK GREENBERG, Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.

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1 P R O C E E D I N G S

2 January 29, 2018

3 (The jury entered the courtroom.)

4 THE COURT: Welcome back. Good morning,  
5 ladies and gentlemen.

6 We're going to start right into the trial.  
7 Our witness, when we stopped on Thursday, was Mr. Carpenter.  
8 We were still on his direct examination, which means that  
9 the attorney calling the witness is still asking questions.  
10 So we'll ask Ms. Gibson to pick up where she left off. And  
11 we'll go until about 10:20 or 10:25 before we take a break.

12 And, Ms. Gibson, if you'd just pick up  
13 where you left off.

14 MS. GIBSON: Sure.

15 JEFFREY W. CARPENTER,

16 having been previously sworn, testified as follows:

17 DIRECT EXAMINATION (Cont'd)

18 BY MS. GIBSON:

19 Q. Mr. Carpenter, before we get back into the  
20 timeline, you heard Ms. Geiser say that your salary covers  
21 everything?

22 A. Yes.

23 MR. L. FRIEDMAN: I'm going to object to --

24 Q. (By Ms. Gibson) And with respect --

25 MR. L. FRIEDMAN: -- to the

1 mischaracterization of Ms. Geiser Potashnik's testimony.

2 THE COURT: Ladies and gentlemen, remember  
3 whatever the attorneys say is not evidence. It's up to you  
4 to recall the evidence.

5 MR. L. FRIEDMAN: Thank you, Your Honor.

6 Q. (By Ms. Gibson) And do you recall Mark Jones  
7 talking about various people who live in the communities,  
8 our nurses, our firefighters, our teachers --

9 A. Yes.

10 Q. -- people who just need a fresh start?

11 If -- if that was the case that salary  
12 always covers everyone's work, would anyone, whether you or  
13 the people living in those communities, ever be entitled to  
14 a raise if salary covered everything?

15 A. They're -- in the tax group program there is --

16 MR. L. FRIEDMAN: I'm going to object to  
17 that as being nonresponsive.

18 Q. (By Ms. Gibson) Just generally --

19 A. Generally.

20 Q. -- as far as people who work?

21 A. Yes.

22 Q. And if salary always covered everything, would  
23 anyone ever be able to enforce any bonus?

24 A. No.

25 Q. That goes for you or anyone else?

1 A. Correct.

2 Q. And with respect to modifications to a written  
3 agreement having to be in writing, have you learned at some  
4 point whether or not that's accurate for this type of  
5 employment agreement?

6 MR. L. FRIEDMAN: I'm going to object to  
7 that question because it calls for this witness to opine  
8 about a legal conclusion, which is the province of the  
9 Court.

10 THE COURT: That's right. Sustained.

11 Q. (By Ms. Gibson) Mr. Carpenter, I'm handing you  
12 Plaintiff's Exhibit 53 and 54.

13 MR. L. FRIEDMAN: Thank you.

14 Q. (By Ms. Gibson) And the one I just handed -- is  
15 the short one 53?

16 A. 54.

17 Q. Okay.

18 MR. L. FRIEDMAN: I'm sorry. Which is  
19 which?

20 THE WITNESS: Fifty-four is --

21 MS. GIBSON: The long one is 53.

22 THE WITNESS: -- the stapled one.

23 MR. L. FRIEDMAN: The long one is 53?

24 MS. GIBSON: Yes.

25 Q. (By Ms. Gibson) And so, Mr. Carpenter, do you

1 recognize these as expense reports --

2 MR. L. FRIEDMAN: I apologize.

3 Q. (By Ms. Gibson) -- while you were working at --

4 MR. L. FRIEDMAN: Pardon me. Was this on  
5 the exhibit list, Your Honor?

6 MS. GIBSON: Your Honor, this was a  
7 supplement. It was in response to testimony.

8 THE COURT: You produced it?

9 MS. GIBSON: Oh, yes.

10 THE COURT: It's a document produced.

11 MR. L. FRIEDMAN: Was it produced before  
12 last night, Your Honor?

13 MS. GIBSON: Oh, yes.

14 MR. L. FRIEDMAN: All right.

15 MS. GIBSON: Long time ago.

16 Q. (By Ms. Gibson) And do you recognize Exhibits 53  
17 and 54, Mr. Carpenter, as copies of your expense reports at  
18 Southwest Housing?

19 A. Yes.

20 MS. GIBSON: Offer Exhibits 53 and 54.

21 THE COURT: All right.

22 Any objection?

23 MR. L. FRIEDMAN: Give me one second.

24 Mr. Donohue is going to look this over.

25 No objection, Your Honor.

1 THE COURT: 53 and 54 are admitted.

2 Q. (By Ms. Gibson) If you take a look at the first  
3 page of Exhibit 53, is this an expense report for time on  
4 Katrina relief efforts?

5 A. Yes, ma'am.

6 Q. And it shows initially you were in Dallas?

7 A. Yes. The -- excuse me.

8 MR. L. FRIEDMAN: I'm going to object to  
9 everything after yes as being nonresponsive, Your Honor.

10 MS. GIBSON: Okay.

11 Q. (By Ms. Gibson) Will you briefly explain what you  
12 were doing and where?

13 A. This expense report relates to purchases made in  
14 behalf of victims that we housed at Meadow Lane and Cedar  
15 Crest Apartments.

16 Q. In the Dallas area?

17 A. Yes. Yes, ma'am.

18 Q. And if you'll look at the second page of Exhibit  
19 53 you see that this is an expense report for time elsewhere  
20 in connection with relief efforts?

21 A. Yes, ma'am.

22 Q. Okay. And where were you, as far as these expense  
23 reports go?

24 A. Austin and Houston. Houston, primarily.

25 Q. And if you look at the next page, what were you

1 doing here?

2 A. This was an extended stay at the property in Las  
3 Vegas, Casa Del Norte, that we were finishing up the  
4 construction rehab on.

5 Q. Okay. And you're --

6 A. The management site.

7 Q. The meeting with City of Dallas and FEMA, who  
8 attended that from Southwest Housing, if you remember?

9 A. I don't have that page. Is that -- am I supposed  
10 to have that page?

11 Q. It's on the next page of Exhibit 53.

12 (Pause)

13 Q. You can just look at the screen.

14 A. It's not on it. But that's my -- that's me.

15 Q. Okay.

16 And if you take a look at Exhibit 54, this  
17 is a different event unrelated to Katrina, correct?

18 A. Yes. That's the one I was referring to Villareal.

19 Q. Okay. And where are you?

20 A. In Las Vegas.

21 Q. All right.

22 This is in January of 2007?

23 A. Yes, ma'am.

24 Q. And it's just -- is this when you -- is this time  
25 frame when you met with Brian and talked about putting the



1 deal on a napkin?

2 MR. L. FRIEDMAN: Objection, leading.

3 THE COURT: Sustained.

4 Q. (By Ms. Gibson) In connection -- did you meet with  
5 Brian during this time frame when you were in Las Vegas?

6 A. Yes, ma'am.

7 Q. And did that include a meeting about asking Brian  
8 to memorialize your deal?

9 A. Yes, ma'am.

10 Q. And where did that take place?

11 A. At the Venetian Hotel in a oriental restaurant.  
12 There's a lot of restaurants. I'm not sure of the name.

13 Q. Okay. And what was the gist of that meeting  
14 again?

15 A. It was confirmation for me to stay focused and  
16 motivated. I expressed to Brian we've met several times;  
17 that things haven't been delivered. And he felt the need,  
18 apparently, to come out to talk to me to make sure that I  
19 was comfortable and that the deal that we had, the  
20 three-percent deal, is commitment, is a deal, a oral  
21 agreement. And we talked about, again, possibly -- or the  
22 potential of memorializing it. And he mentioned that  
23 it should be done in a few days, he'll take care of it.

24 And this is the dinner of where, if I -- do  
25 you want me to write it on the back of a napkin? I

1 basically said sure, but they were linen napkins and we  
2 couldn't. So we said we'll reconvene in a few days.

3 Q. Mr. Carpenter, we have talked a lot about  
4 different entities during this trial. But when you were  
5 actually working at Southwest Housing, who -- put aside  
6 legal stuff -- who did you consider your agreements to be  
7 with?

8 A. Southwest Housing.

9 Q. Okay.

10 A. Can --

11 Q. Can what?

12 A. Can we kind of use Southwest Housing collectively  
13 as one company --

14 Q. Okay.

15 A. -- With different divisions?

16 Q. All right. And what about Brian and Cheryl?

17 A. I'm sorry. I don't understand your question.

18 Q. Well, for example, your written agreement with  
19 Southwest Housing Management, do you recall saying you felt  
20 like that was with Brian and Cheryl?

21 MR. L. FRIEDMAN: Leading, Your Honor.

22 MS. GIBSON: It's --

23 THE COURT: Overruled.

24 A. Yes. Yes, I do.

25 Q. (By Ms. Gibson) Okay.

1 And to clear up a couple of things, do you  
2 recall that the other side asked your wife if your daughter  
3 had transcribed the phone recording?

4 A. Yes, ma'am.

5 Q. I'm going to hand you what's been marked Exhibit  
6 55. Do you recognize Exhibit 55 as what is separately  
7 marked Exhibit 17 that defendants used during a deposition  
8 in this case?

9 MR. L. FRIEDMAN: Can we approach,  
10 Your Honor?

11 THE COURT: Yeah. Okay.

12 (Sidebar conference held)

13 Q. (By Ms. Gibson) Mr. Carpenter, do you recognize  
14 Exhibit 55 as Exhibit 17 that defendants used during your  
15 deposition?

16 A. Yes, ma'am.

17 Q. Okay. And the top of the transcript that we've  
18 elsewhere used in this case says --

19 MS. GIBSON: Or plaintiff offers Exhibit  
20 55.

21 MR. L. FRIEDMAN: We have no objection,  
22 Your Honor.

23 THE COURT: All right. 55 is admitted.

24 Q. (By Ms. Gibson) And you see that on top of it is  
25 the declaration of Sandy Dixon?

1 A. Yes, ma'am.

2 Q. And it says that she personally transcribed the  
3 recording?

4 A. Yes.

5 Q. And it clarifies that what -- what we've been  
6 using here is -- is that from your daughter or Sandy?

7 A. From Sandy.

8 Q. Do you recall, Mr. Carpenter, some discussion  
9 about Cheryl thought you got a raise early on? Didn't we  
10 give Jeff Carpenter a raise?

11 A. I found that out somewhat recently, yes.

12 Q. Okay. But have you looked at the numbers?

13 A. Yes.

14 Q. Okay.

15 And this is Exhibit 9. I realize you don't  
16 have all of the exhibits in front of you, but Cheryl  
17 Potashnik thought you got a raise. You see this here?

18 A. Yes.

19 Q. Okay.

20 And if so, that would have been oral?

21 A. Yes, ma'am.

22 Q. Or would it have been? Okay.

23 And up here the indication is your salary  
24 was increased with the addition of an adjustment of about  
25 \$139, and then 276 and change car allowance. You see that?

1 A. Yes, ma'am.

2 Q. And, ultimately, did you look down and try to  
3 determine if this was truly a raise?

4 A. Yes, I did.

5 Q. Okay. And was it truly a raise?

6 A. No.

7 Q. What was the -- the car allowance was just being  
8 embedded into your salary?

9 A. Yes.

10 Q. And what was the 139.48 adjustment?

11 A. I never figured it out.

12 Q. Well, you see here on the second page there's a  
13 reference to car, an adjustment, and insurance?

14 A. Okay.

15 Q. Okay. Does that refresh your memory that this was  
16 a premium --

17 A. Yes.

18 Q. -- correction?

19 A. I do now, yes.

20 Q. Okay.

21 Do you recall talking about the \$50,000  
22 advance against bonus?

23 A. Yes, ma'am.

24 Q. Okay. And you were paid that bonus in your --  
25 what year of your employment?

1 A. First year.

2 Q. In your first year.

3 And you initially -- did you initially  
4 think you needed to repay it?

5 A. No.

6 Q. Okay. Because -- and who told you that, if  
7 anyone?

8 A. Brian.

9 Q. Okay. That was his idea?

10 A. It came from Brian, so yes.

11 Q. And you recall this is Exhibit 8; that,  
12 ultimately, Keith Jones had to reconcile that?

13 A. Yes, ma'am.

14 Q. And it was treated as an advance on bonus?

15 A. Yes.

16 Q. Okay. So -- also, during this time frame, you got  
17 paid another amount at -- not this time frame but in your  
18 first year you got paid something in addition to the 50,000?

19 A. Yes.

20 Q. And what was that?

21 A. Twenty-five thousand to cover the taxes for the  
22 fifty thousand for the previous year.

23 Q. Okay.

24 And on Exhibit 8, was that ultimately part  
25 of the reconciliation?

1 A. Yes.

2 Q. Okay. And is -- was that 25-, after taxes,  
3 applied toward expenses?

4 A. Yes, it was.

5 Q. Now, you remember when your wife Vikki testified?

6 A. Yes.

7 Q. So what's the deal, Jeff? Are you hiding bonuses  
8 from your wife?

9 A. Not at all.

10 Q. Okay.

11 And at the time that this got reconciled,  
12 what was going on as far as where Vikki was?

13 A. I believe that that was the time she was in  
14 Phoenix taking care of both of her parents, who were --  
15 excuse me -- in the hospital. She left for emergency and  
16 was -- ended up being gone for nearly six months.

17 Q. Okay.

18 Now, with respect to the timeline in this  
19 case, in October of 2006, when Brian Potashnik originally  
20 announced the three-percent formula if you would stay on --

21 A. Yes.

22 Q. -- at that point in time, when did y'all  
23 anticipate the sale would close?

24 A. We were anticipating early spring 2007; the March,  
25 April time frame.

1 Q. And at that time then, when did you anticipate  
2 your end date would be?

3 A. At that time.

4 Q. Okay. And that event is called what?

5 A. The closing.

6 Q. The closing. Okay.

7 So at that time, was it your -- at that  
8 time, Brian and Cheryl Potashnik were asking you to stay  
9 through that point?

10 MR. L. FRIEDMAN: Your Honor, counsel's  
11 just testifying. Can we get to question and answer in a  
12 narrative form? I object 'cause it's leading.

13 MS. GIBSON: I'll rephrase it.

14 THE COURT: All right.

15 Q. (By Ms. Gibson) Did they ask -- at that point in  
16 time, did they ask you to stay through --

17 MR. L. FRIEDMAN: It is leading.

18 THE COURT: Overruled.

19 Q. (By Ms. Gibson) At that point in time, had they  
20 asked you to stay through the initial closing?

21 MR. L. FRIEDMAN: Leading.

22 THE COURT: Overruled.

23 A. They asked me to stay through the transaction of  
24 the management transition.

25 Q. (By Ms. Gibson) Well, but this is in October of



1 2006. I'm not asking -- so let me back up.

2 MR. L. FRIEDMAN: Leading, Your Honor.

3 He's obviously --

4 THE COURT: She doesn't --

5 MR. L. FRIEDMAN: He's obviously not  
6 keeping up with the script, so she has to ask questions.

7 MS. GIBSON: Your Honor, I object to the  
8 commentary.

9 THE COURT: The objection to the commentary  
10 is sustained; the objection to leading is overruled.

11 Q. (By Ms. Gibson) Later, by the end, okay, by the  
12 time that management was going to transition on or about  
13 November 1, 2007, at that point things had changed. So as  
14 far as the timeline on how long you were asked to stay on,  
15 when you and Brian initially shook hands on the deal, how  
16 long were they asking you to stay when he announced the  
17 three percent?

18 A. Through the time period of April, May of 2007ish.

19 Q. Okay. Which would have been what event?

20 A. The Cascade Southwest Housing closing.

21 Q. Okay.

22 And then at some point, did you realize  
23 whether or not you were going to have a job with the  
24 purchaser?

25 A. Yes. I realized I was not going to be employed

1 with the purchaser.

2 Q. And then at some later point after you and Brian  
3 shook hands, did anyone ask you to maybe stay on for a  
4 little while longer, potentially, to be picked up?

5 A. It was unknown, but there was a potential that  
6 once the transition of the two -- of the management company  
7 merging that I may be needed for a short period of time to  
8 smooth out any rough edges, if you will.

9 Q. Okay. And that -- would that have been temporary  
10 or permanent?

11 A. That would have been very temporary; probably 30-,  
12 60-day time frame.

13 Q. And then by the time you're hitting October of  
14 2007, at that point, at what point did they think you would  
15 be needed to help make the sale happen?

16 A. At that point, I met with Brian on October 12.  
17 And without going into the details there, he said I  
18 fulfilled my requirements for the earned bonuses as well as  
19 the three-percent deal. And that was also when he gave me  
20 permission to keep my laptop to stay in communication. We  
21 were working on the sale in the --

22 MR. L. FRIEDMAN: Object to this as being  
23 nonresponsive, Your Honor.

24 THE COURT: Break up your questions.

25 MS. GIBSON: Okay.

1 Q. (By Ms. Gibson) So -- so at that point after  
2 Brian -- so after Brian says you could leave then or stay  
3 on, did you later also talk to Cheryl Potashnik?

4 A. I spoke to Cheryl.

5 Q. And how long did Cheryl ask you to stay on?

6 A. Cheryl asked me to stay on through the management  
7 transition. That was according to -- I believe that it was  
8 in consulting asset management agreement that they worked  
9 out with Pinnacle, which was a takeover of the transition of  
10 the employees and the staff, which would have happened  
11 November 1st, 2007.

12 Q. And so by the end, what date was your work  
13 essentially done as far as what they asked you to do?

14 A. Essentially done the day before, October 31st.

15 Q. Okay.

16 Now, I want to talk a little bit about the  
17 initial time in October of 2006 when Brian has announced the  
18 three-percent formula. At some point, did you attempt to  
19 negotiate anything higher?

20 A. Yes, I did.

21 Q. And did you meet with Brian about that?

22 A. Yes. I met with Brian in his office.

23 Q. And what was the gist of that conversation?

24 A. I spoke to him -- appreciated the sales proceeds  
25 bonus that he laid out from the original conversations that

1 I had at his house. I thought it would be more, so I asked  
2 for five percent rather than three percent.

3 Q. And what did he tell you?

4 A. He said he can't do that; that there's another  
5 person down at the far end of the hallway that's already  
6 approved the three percent and that that's --

7 MR. L. FRIEDMAN: Your Honor, it  
8 violates -- this violates the limine and it's hearsay.

9 MS. GIBSON: This is from Brian Potashnik.  
10 It's an admission.

11 THE COURT: What was the question?

12 MS. GIBSON: I -- we were asking -- he was  
13 talking about -- I don't remember exactly what the question  
14 was.

15 THE COURT: Ask the question again then.

16 MS. GIBSON: Okay.

17 Q. (By Ms. Gibson) And in response to -- in response  
18 to your request to raise the deal to five percent rather  
19 than three percent, what was Brian Potashnik's response to  
20 you?

21 A. His response was that we had to stay with three  
22 percent; that he -- there's another person down at the end  
23 of the hall --

24 MR. L. FRIEDMAN: Okay, this violates the  
25 limine.

1 THE COURT: How?

2 MR. L. FRIEDMAN: Well, because we're not  
3 talking about anybody else but Mr. Carpenter.

4 THE COURT: He's been saying he's  
5 negotiating -- renegotiating his bonus.

6 You're talking about your bonus, right?

7 MS. GIBSON: Yes.

8 THE WITNESS: Yes, sir.

9 MR. L. FRIEDMAN: He's about to talk about  
10 somebody else.

11 THE COURT: Don't talk about anyone else's  
12 and don't ask about anyone else's.

13 Q. (By Ms. Gibson) Well, let me clear this up and  
14 I'll ask you the question again. Okay?

15 A. Okay.

16 Q. Who is the person down at the end of the hall?

17 A. Cheryl Potashnik.

18 Q. Now, in response to your request to negotiate for  
19 a higher five percent rather than three percent, what was  
20 Brian Potashnik's response to you?

21 A. That it would have to stay at three percent,  
22 that's what we talked about, that's what I approved, and  
23 we've committed to it.

24 Q. Okay. And you -- and just because of the  
25 interruption I need you to repeat. What -- what did he say

1 to you about Cheryl Potashnik down the hall as far as why he  
2 wouldn't raise it to five percent?

3 A. He said that he has another person that he has to  
4 approve or work -- work through. She can -- it's been  
5 approved at three percent and that's what we discussed,  
6 that's what we talked about, and I can't do five percent. I  
7 can't do anymore than that.

8 Q. Okay. So as of around shortly after Brian  
9 Potashnik announced the three-percent deal in October of  
10 2006, did you believe Cheryl Potashnik had also approved the  
11 deal?

12 A. Yes, ma'am.

13 Q. Okay. And did you believe Brian Potashnik had  
14 authority to speak for her?

15 A. Yes.

16 Q. Okay.

17 And if Brian -- whether or not you know who  
18 all the sellers are, if Brian Potashnik is offering you a  
19 cut of sellers' proceeds, who do you believe he's acting on  
20 behalf of?

21 A. The sellers.

22 Q. I'm handing you what's been marked Plaintiff's  
23 Exhibit 56 and 57.

24 MR. L. FRIEDMAN: Is this the new one?  
25 Brian?

1 MR. DONOHUE: What?

2 (Soto voce conversati on hel d)

3 MS. GIBSON: No.

4 Q. (By Ms. Gibson) You have seen -- Mr. Carpenter,  
5 you're aware in this case that we've subpoenaed documents  
6 from Cascade Affordable Housing?

7 A. Yes, ma'am.

8 Q. And you see the Bates label at the bottom, CAH-SW  
9 and numbers?

10 A. Yes, ma'am.

11 Q. Okay. Is that consistent with the Bates label  
12 that's on the documents we got from them?

13 A. Yes.

14 Q. Okay. Does this appear to be an accurate copy of  
15 responsive materials from that document on the closing?

16 A. Yes.

17 MS. GIBSON: Plaintiff offers 56 and 57.

18 THE COURT: Any objection?

19 MR. L. FRIEDMAN: No, sir.

20 THE COURT: 56 and 57 are admitted.

21 Q. (By Ms. Gibson) You see in Exhibit 56 there's a  
22 certificate that has to be signed, apparently, according to  
23 the language, in order to -- for the purchaser to give money  
24 to the seller?

25 A. Yes.

1 Q. And this is in connection with the asset sale?

2 A. Yes, ma'am.

3 Q. All right.

4 And you see at the bottom Cheryl Potashnik  
5 is signing individually as the seller?

6 A. Yes.

7 Q. Okay.

8 And Exhibit 57 is the same type of  
9 certificate but for Brian Potashnik is the seller?

10 A. Yes, ma'am.

11 Q. Okay. And so does that confirm -- at least, does  
12 it confirm in your mind that they were individual sellers in  
13 the asset sale?

14 A. Yes, ma'am.

15 Q. And with respect to Brian Potashnik's position,  
16 did you understand -- did you believe he was an owner?

17 A. Yes.

18 Q. And did you believe he was an officer?

19 A. Yes.

20 Q. Did you know if he was also a director of the  
21 entities?

22 A. I don't think I ever gave that much thought, but I  
23 would say yes.

24 Q. Okay.

25 I'm handing you Plaintiff's Exhibits 36,



1 37, 38. Do those appear to be -- do those name the entities  
2 involved in this case, Southwest Housing Management,  
3 Southwest Housing Development, Affordable Housing  
4 Construction?

5 A. Yes.

6 MR. L. FRIEDMAN: Which is which?

7 Q. (By Ms. Gibson) Can you -- would you read off --

8 A. Yes.

9 Q. -- for Exhibit 36?

10 A. Thirty-six is Southwest Housing Development  
11 Company.

12 Q. Okay. Thirty-seven?

13 A. Affordable Housing Construction, Incorporated.

14 Q. And 38?

15 A. Southwest Housing Management Company, Inc.

16 Q. And do those appear to be Secretary of State  
17 records?

18 A. Yes.

19 MS. GIBSON: Plaintiff offers 36, 37, and  
20 38.

21 THE COURT: Any objection?

22 MR. L. FRIEDMAN: One moment, please.

23 (Pause)

24 MR. L. FRIEDMAN: Lack of foundation,  
25 Your Honor. Improper authentication or not proper

1 authentication.

2 MS. GIBSON: Your Honor, they produced them  
3 to us in this case.

4 MR. L. FRIEDMAN: Same objection. Lack of  
5 foundation --

6 THE COURT: Let me see, Mr. Carpenter. Is  
7 there --

8 THE WITNESS: Excuse me?

9 MS. GIBSON: I'll also request that the  
10 Court take judicial notice.

11 THE COURT: They're governmental records.

12 MR. L. FRIEDMAN: If they are. If they  
13 are. And we don't know if they're complete. There's no  
14 certification from the Secretary of State.

15 THE COURT: The objection's overruled. The  
16 Court finds they're self-authenticating. That's 36, 37, 38  
17 are admitted.

18 Q. (By Ms. Gibson) Okay. Mr. Carpenter, going back  
19 to where we were yesterday talking about Will Hartsfield --

20 A. Yes.

21 Q. -- we had talked about some notes. I'm handing  
22 you Plaintiff's Exhibit 51-1. Does 51-1 appear to be an  
23 accurate copy of the notes that were Exhibit 51 yesterday  
24 and that he gave to you?

25 A. Yes, ma'am.

1 Q. Okay. Although there are now some redactions on  
2 it?

3 A. Yes, three.

4 MR. DONOHUE: Is that the redacted one --

5 MS. GIBSON: Yes.

6 MR. DONOHUE: -- that you sent last night?

7 MS. GIBSON: Yes. And I just gave you a  
8 copy.

9 Plaintiff offers Exhibit 51-1.

10 MR. L. FRIEDMAN: My understanding is we  
11 were going to substitute the other one for this one -- this  
12 one for the other one.

13 THE COURT: Right. Fifty-one is part of  
14 the reporter's record and 51A [sic] is admitted into  
15 evidence for the jury. It's already in.

16 MS. GIBSON: Okay. I'm sorry. I called it  
17 51-1. It should be 51 --

18 THE COURT: However you're marking it.

19 MS. GIBSON: Okay. I marked it 51-1.

20 THE COURT: Okay, that's fine.

21 Q. (By Ms. Gibson) Okay. And we talked about car  
22 accidents. What was restructured? Or what is -- what is  
23 this referring to? Do you see this many car accidents?

24 A. Yes. Car accident twice.

25 MR. L. FRIEDMAN: This calls for

1 speculation on the part of this witness.

2 MS. GIBSON: I'm just asking about in  
3 connection with your discussion.

4 MR. L. FRIEDMAN: It's not his notes.

5 THE COURT: If you know, you can answer; if  
6 you don't, don't speculate.

7 A. I can't recall a hundred percent.

8 Q. (By Ms. Gibson) Okay. And then when it talks  
9 about selling interest in real estate --

10 A. Yes.

11 Q. -- who are you referring to selling an interest in  
12 real estate?

13 A. The Potashniks.

14 Q. Okay. Did your agreement involve you selling or  
15 receiving an interest in real estate?

16 A. No.

17 Q. And no job for him, what is that referring to?

18 A. That means at the end of the day that I would be  
19 unemployed.

20 Q. Okay. And past promises?

21 A. Past promises refers to acknowledged earned  
22 bonuses that have been -- that have not been paid.

23 Q. And --

24 A. And --

25 Q. Go ahead.

1           A.    -- and I was promised many times, multiple times,  
2 and time and time again.

3           Q.    Okay.

4                         And paid at closing, what does that refer  
5 to?

6           A.    That refers to when Brian and I initially spoke  
7 about the three percent. He made a comment that it will be  
8 a great day to, you know, see Jeff Carpenter's name on the  
9 closings statements of the sales transaction.

10          Q.    Okay.

11                       And do you recall I asked you if you had --  
12 if you had done some Internet research on, like, legal  
13 agreements, sample agreements?

14          A.    Yes.

15          Q.    Okay. And did you take -- did you look into that  
16 and see if Vikki Carpenter, your wife, did some Internet  
17 research on sample legal agreements?

18          A.    Yeah, she did.

19          Q.    I'm handing you Plaintiff's 58. Do you recognize,  
20 Mr. Carpenter, Plaintiff's 58 as an Email between you and  
21 Will Hartsfield and yourself and Vikki Carpenter?

22          A.    Yes, ma'am.

23          Q.    With some attached notes --

24          A.    Yes.

25          Q.    -- in your handwriting?

1 MS. GIBSON: Plaintiff offers 58.

2 THE COURT: Any objection?

3 MR. L. FRIEDMAN: Was this on the exhibit  
4 list?

5 MS. GIBSON: Yes.

6 MR. L. FRIEDMAN: Will you identify the  
7 document you sent over last night?

8 MS. GIBSON: I don't have them memorized.  
9 It's on the list. These are the Will Hartsfield documents.

10 MR. L. FRIEDMAN: Give us a minute,  
11 Your Honor.

12 (Pause)

13 MR. L. FRIEDMAN: She sent over a bunch of  
14 new documents last night. I just want to make sure.

15 MS. GIBSON: They're not new.

16 MR. L. FRIEDMAN: Yes, they're new.

17 MS. GIBSON: They're produced.

18 (Pause)

19 MR. DONOHUE: You say Will Hartsfield's  
20 documents?

21 MS. GIBSON: Yes.

22 MR. L. FRIEDMAN: It'd be Number 58.

23 MR. DONOHUE: There are no numbers on this  
24 list other than what we put on them.

25 THE COURT: Well, is there an objection to

1 the substance of that document?

2 MR. L. FRIEDMAN: Yes. These were not on  
3 her exhibit list. Therefore, it would be irrelevant and  
4 surprise.

5 MS. GIBSON: Your Honor, I disagree, and  
6 these were produced a long time ago to the other side.

7 MR. DONOHUE: It just refers to Hartsfield  
8 notes, which was 51-1, I believe.

9 MR. L. FRIEDMAN: Not on the exhibit list,  
10 Your Honor.

11 THE COURT: She's produced them, she said.

12 MR. L. FRIEDMAN: She --

13 MR. DONOHUE: It has no Bates stamp. We  
14 cannot tell they've been produced.

15 THE COURT: Bring it over here.

16 (Sidebar conference held)

17 THE COURT: The objection to 58 is  
18 overruled and 58's admitted.

19 Q. (By Ms. Gibson) So you see at the bottom of the  
20 Email that's your -- is that your Email to Will Hartsfield  
21 about meeting at his office?

22 A. Yes, ma'am.

23 Q. And then there's an Email between yourself and  
24 your -- is it between yourself and your wife or is that just  
25 to yourself?

1 A. My wife, yes.

2 Q. And y'all are discussing different clauses to add?

3 A. Yes, ma'am.

4 Q. And so death benefit, some issues about developer  
5 fees, being sure you stay through closing, right?

6 A. Yes, ma'am.

7 Q. Okay. And then here you also mentioned if  
8 employment's terminated between now and closing you still  
9 get paid?

10 A. Yes.

11 Q. And is -- are these some of the things that y'all  
12 were looking at either through Will Hartsfield or on the  
13 Internet?

14 A. On the Internet first. And I took those notes  
15 with me when I met with Will on the 7th of March.

16 Q. Okay.

17 Although y'all are talking about different  
18 terms like what -- or additional terms like what if somebody  
19 dies, does any of this change your handshake deal with  
20 Mr. Potashnik on behalf of the sellers?

21 A. No, ma'am.

22 Q. We -- going back, we had talked about, in the  
23 timeline, you meeting -- or AHF pursuing you?

24 A. Yes, ma'am.

25 Q. Okay.



1 And in connection with -- and you had  
2 delayed your -- your offer. Ultimately, you got an offer?

3 A. Yes.

4 Q. Okay. And why did you delay starting with  
5 American Housing Foundation?

6 A. Because of the oral agreement that I had with  
7 Brian for the three percent as well as the paid annual  
8 bonuses.

9 Q. Okay.

10 A. I wasn't willing to walk away from that.

11 Q. And, ultimately, you -- or does Exhibit 59 look to  
12 be an accurate copy of the memorandum, of a memorandum of  
13 agreement with AHF?

14 A. Yes.

15 Q. And they had started pursuing you about when?

16 A. I believe I met Jeff Richards April 24th of '07.

17 Q. So --

18 A. For the first time.

19 Q. Okay, sometime in April of 2007?

20 A. Yes, ma'am.

21 Q. All right.

22 MS. GIBSON: Plaintiff offers Exhibit 59.

23 THE COURT: All right.

24 Any objection?

25 MR. L. FRIEDMAN: Yes.

1 THE COURT: All right.

2 MR. L. FRIEDMAN: This is surprise, never  
3 seen it before, not produced ever before.

4 MS. GIBSON: That's not accurate.

5 MR. L. FRIEDMAN: No Bates number on it.

6 MS. GIBSON: In fact, there is a label on  
7 the documents that were produced and copied that says it's  
8 about a job search and offers.

9 THE COURT: All right. Objection's  
10 overruled. Fifty-nine is admitted.

11 Q. (By Ms. Gibson) Okay, do you see, Mr. Carpenter,  
12 that at the top of the page you're entering an agreement --  
13 we're fast forwarding here -- on October 3rd of 2007?

14 A. Yes.

15 Q. With American Housing Foundation, right?

16 A. Yes.

17 Q. Okay.

18 But still, even though you're agreeing at  
19 this point, when is your employment targeted to begin?

20 A. November 1, 2007.

21 Q. Okay. And what is --

22 A. But only targeted.

23 Q. Right. And what is the significance of November  
24 1, 2007?

25 A. That was the transition of management of Pinnacle

1 with Southwest Housing employees. And, consequently, I'd be  
2 with unemployed.

3 Q. Okay. And there's a caveat here. And what is  
4 that?

5 A. The need to be flexible with the full-time start  
6 date. May be necessary to enable a smooth and thorough  
7 transition of the sale of ownership interest with existing  
8 employer.

9 Q. And was -- if you put aside the three-percent sale  
10 proceeds bonus, was this -- was the offer at American  
11 Housing Foundation more or less than at Southwest Housing?

12 A. More.

13 Q. And why did you -- why did you make the start date  
14 flexible?

15 A. To ensure that I fulfilled my requirement and  
16 commitments to the three-percent arrangement agreement that  
17 we had.

18 Q. Okay. And if the closing had lasted -- if you had  
19 been asked to stay on longer than through the management  
20 transition, would you have done so?

21 A. Yes, ma'am.

22 Q. I'm handing you Plaintiff's Exhibit 60. Do you  
23 recognize Exhibit 60 as an Email from Steve Sterquell to  
24 you?

25 A. Yes, ma'am.

1 Q. Okay. And he's making you certain offers  
2 concerning the job at American Housing Foundation?

3 A. Yes, ma'am.

4 MS. GIBSON: Plaintiff offers Exhibit 60.

5 THE COURT: Any objection?

6 MR. L. FRIEDMAN: Same objections as  
7 before, Your Honor. Not produced, surprise --

8 THE COURT: Right. Overruled.

9 MR. L. FRIEDMAN: -- relevance, lack of  
10 foundation.

11 THE COURT: Okay. Overruled. Sixty is  
12 admitted.

13 Q. (By Ms. Gibson) And who is Steve Sterquel?

14 A. The president and founder of American Housing  
15 Foundation.

16 Q. Okay. And so after the conversation he's talking  
17 about -- he talks about salary?

18 A. Yes.

19 Q. Okay. And that's 250,000?

20 A. Actually, it's 259-.

21 Q. Well, you see it says this amount will be  
22 increased 9,000 to offset auto allowance?

23 A. Right.

24 Q. Okay.

25 A. Yes.

1 Q. So your base is what?

2 A. 250-.

3 Q. And then ultimately ends up being 259- for auto  
4 allowance?

5 A. Correct.

6 Q. Okay. And is that higher or lower than what your  
7 base was, including car allowance, at Southwest Housing?

8 A. Slightly higher.

9 Q. Okay.

10 A. I mean significantly higher.

11 Q. And the acquisition bonus, could you briefly  
12 explain what is being offered here?

13 A. Yes. We were growing the portfolio and --

14 Q. Well, just -- sorry. But just back up. Can you  
15 just explain what the bonus is and what it's paid from?

16 A. One was an acquisition bonus paid at closing for  
17 purchasing of new properties to the portfolio.

18 Q. Okay. And how much would you get on each new  
19 property?

20 A. Ten thousand for market rate and student deals and  
21 fifteen percent for tax credit developments.

22 Q. Okay. And so that's for each.

23 When you say each property, does that mean  
24 each apartment complex?

25 A. Yes, ma'am.

1 Q. And the operation performance bonus, can you  
2 briefly explain what is being offered here?

3 MR. L. FRIEDMAN: Your Honor, relevance.

4 MS. GIBSON: Your Honor, the relevance is  
5 the amount he was being offered that shows --

6 THE COURT: You don't -- you're -- the  
7 document speaks for itself. Are you going through the  
8 entire document?

9 MS. GIBSON: Well --

10 THE COURT: He's already said that this was  
11 for more.

12 MS. GIBSON: I'm not going through family  
13 health benefits. I just want to explain the bonus structure  
14 a little bit.

15 MR. L. FRIEDMAN: They're not seeking  
16 damages for this portion of their case.

17 MS. GIBSON: No. It just explains --

18 THE COURT: I understand. The objection's  
19 overruled. Go ahead.

20 Q. (By Ms. Gibson) Okay. Your operations performance  
21 bonus?

22 A. Rate is 10 percent or 5,000 on all properties that  
23 have distributable cash flow. So any property that had  
24 distributable cash flow over 5,000 -- greater than 10  
25 percent, \$5,000, I would get \$5,000 per property.

1 Q. Okay. And compared to your bonus range between  
2 50- and 200,000 at Southwest Housing, your annual bonus  
3 range, was the bonus potential here higher or lower at AHF  
4 compared -- let me try that again. Was the bonus structure  
5 potential at American Housing Foundation potentially higher  
6 or was it lower than your annual bonuses at Southwest?

7 A. Higher.

8 Q. Ultimately, Mr. Carpenter, what happened to  
9 Steve Sterquell?

10 A. He was killed in an automobile accident on April  
11 1st, 2009.

12 Q. Okay. And you -- did you leave after that?

13 A. Yes, I did.

14 Q. And did Jeff Richards, who we heard testify by  
15 video here, did he also leave around the same time?

16 A. Yes, ma'am.

17 Q. And, ultimately, what happened to the company  
18 after Steve Sterquell died?

19 A. It went into receivership and to bankruptcy.

20 Q. I'm handing you Plaintiff's Exhibit 60. Do you  
21 recognize --

22 MR. L. FRIEDMAN: Wait. This is 61.

23 MS. GIBSON: I'm sorry. Sixty-one.

24 Q. (By Ms. Gibson) Do you recognize Exhibit 61 as  
25 part of a claim you filed with the bankruptcy court --

1 A. Yes, ma'am.

2 Q. -- for American Housing Foundation? Okay.

3 MS. GIBSON: And plaintiff offers Exhibit  
4 61.

5 THE COURT: Any objection?

6 MR. L. FRIEDMAN: Same objection,  
7 Your Honor. It's brand new. I've been produced hearsay.  
8 Lack of foundation.

9 MS. GIBSON: Your Honor, it's what -- it's  
10 part of the filing with the bankruptcy court.

11 MR. L. FRIEDMAN: It appears that it is.  
12 Nevertheless, it's not been produced.

13 MS. GIBSON: That's not accurate.

14 MR. L. FRIEDMAN: Not on her exhibit list.  
15 No Bates stamp.

16 THE COURT: Fair enough.

17 Overruled. Sixty-one is admitted.

18 Q. (By Ms. Gibson) And as far as the bonus structure  
19 in Exhibit 61, how -- what is the bonus portion of what you  
20 had earned at that point that was still owed?

21 A. Number -- number three was \$130,000, but we split  
22 it into two payments. So I received the one. April 1st was  
23 the day that I was supposed to be paid that extra 65-.

24 Q. Okay, so 65- still owed?

25 A. Sixty-five- owed. The operations bonus totaled



1 337, 500 and --

2 Q. Did you mean 337, 500?

3 A. Right.

4 Q. Okay. Now, so you talked to Will Hartsfield and  
5 shortly thereafter you meet with Jeff Richards with American  
6 Housing Foundation. But in the meantime, in March of '13,  
7 you ultimately have a meeting with Brian Potashnik?

8 A. Yes, on the 14th.

9 Q. Okay.

10 MR. L. FRIEDMAN: Thank you.

11 Q. (By Ms. Gibson) I'm handing you what's been  
12 previously marked Plaintiff's Exhibit 52. Do you recognize  
13 Exhibit 52 as notes to yourself to discuss with Brian?

14 A. Yes, ma'am.

15 Q. Okay. And these are sent to your Southwest  
16 Housing work Email?

17 A. Yes. It was to me, from me.

18 Q. All right.

19 MS. GIBSON: Plaintiff offers Exhibit 52.

20 THE COURT: All right. Any objection?

21 MS. GIBSON: Has it been admitted?

22 THE COURT: It came up before. It wasn't  
23 admitted or it wasn't offered then.

24 MR. L. FRIEDMAN: You know, Your Honor, I  
25 have the same objections that I've made before to these

1 newly produced documents.

2 MS. GIBSON: This is -- this is not just  
3 not newly produced; it's on the exhibit list.

4 THE COURT: All right. Okay. Overruled.  
5 Fifty-two is admitted.

6 Q. (By Ms. Gibson) Okay. So on -- what's the date  
7 here?

8 A. March 13th.

9 Q. Okay. And these are what?

10 A. They're my notes to myself to remind me of  
11 different topics to discuss with Brian. So they're --

12 Q. Okay.

13 A. -- discussion points.

14 Q. And do you recall when Brian Potashnik said that  
15 stay bonus and stay and pay was something I made up?

16 A. Yes, I do remember him saying that.

17 Q. And here in your notes to discuss with Brian,  
18 under transition items, what did you note at the time?

19 A. Personnel -- one, personnel decisions,  
20 stay-and-pay incentives.

21 Q. Okay. And in addition to your three-percent  
22 agreement to stay, without getting into details of anybody's  
23 deal, did you have some responsibility for staying, what you  
24 call stay-and-pay incentives?

25 A. Yes, ma'am.

1 Q. Okay. And what -- what were the group of  
2 employees you were responsible for?

3 A. I was responsible for corporate management  
4 personnel.

5 Q. All right. And --

6 A. Whether they were in the corporate office or  
7 satellite offices that we had.

8 Q. Okay. And what was -- without telling us any one  
9 specific deal, what was your role in setting stay-and-pay  
10 incentives for corporate employees?

11 A. Brian initially made some recommendations -- made  
12 a recommendation, which I thought was over generous.

13 Q. Well, we're not talking about specific employee  
14 deals.

15 A. Okay.

16 Q. Okay. In general, just for the entire group,  
17 what -- what was your role in setting stay-and-pay  
18 incentives?

19 A. Setting -- setting the retention, stay and pay,  
20 severance bonus, whatever we want to call it. And I worked  
21 with Keith Jones as well, and we -- to present it to Brian  
22 and Cheryl.

23 Q. Okay. And did you also play a role in selecting  
24 who would receive a stay-and-pay --

25 A. Yes.

1 Q. -- incentive?

2 A. Yes, ma'am.

3 Q. Okay. Is this the same thing or different from  
4 what Keith Jones called severance?

5 A. No. Same thing.

6 Q. Same thing.

7 And what was the purpose of setting these  
8 stay-and-pay incentives?

9 A. Well, it was very important for retention of  
10 employees. Very nervous about the new company coming on  
11 board and bringing their own people. But also to keep the  
12 eye on the ball so they'd be motivated and focused to  
13 continue to do their job and continue to stay on course, the  
14 right course.

15 Q. Okay. And is this in connection with the asset  
16 sale?

17 A. And may I add to keep the continuity flowing  
18 properly?

19 Q. Okay. What do you mean by continuity?

20 A. The integrity of Southwest Housing until Cascade  
21 or Pinnacle took control.

22 Q. Okay. And then --

23 A. To maintain the standards.

24 Q. -- and then you also refer -- you also refer to  
25 this as a stay plan?

1 A. Yes.

2 Q. Is that the same thing?

3 A. Yes.

4 Q. Okay. And is this part of the plan or program to  
5 pay severance or stay bonuses that Keith Jones testified  
6 about?

7 MR. L. FRIEDMAN: Leading.

8 THE COURT: Overruled.

9 A. Yes.

10 Q. (By Ms. Gibson) All right. Mr. Carpenter, do you  
11 recall when Brian Potashnik testified that he never had you  
12 lead any tours for prospective sellers or investors?

13 A. Yes.

14 Q. I'm sorry. Respective purchasers?

15 A. Yes, I recall him saying that I was not involved.

16 Q. Okay. And were you, in fact, involved in that?

17 A. Yes, I was.

18 Q. Okay.

19 I'm handing you what's been marked  
20 Plaintiff's Exhibit 62. Do you recognize Plaintiff's 62 as  
21 an Email from Basil Rallis to you on April 12th, 2007?

22 A. Yes, I do.

23 Q. And is this in connection with something you  
24 received during the course of your work in connection with  
25 the asset sale?

1 A. Yes, ma'am.

2 Q. Okay.

3 MS. GIBSON: Plaintiff offers Exhibit 62.

4 THE COURT: All right. Any objection?

5 MR. L. FRIEDMAN: Same objections,

6 Your Honor.

7 THE COURT: Overruled. Sixty-two is

8 admitted.

9 Q. (By Ms. Gibson) So this Email is from Basil Rallis  
10 at Cascadeaffordable.com?

11 A. Yes.

12 Q. Who is Basil Rallis?

13 A. He was, for the most part, I believe -- I don't  
14 know what his title was, but he was the transaction person  
15 for Cascade. He was the developer, the purchaser, the  
16 leader of putting the deal together for Cascade.

17 Q. Okay. And so as of April 12, 2007, he's Emailing  
18 you about a tour?

19 A. Yes, ma'am.

20 Q. Okay. And he's talking to you about the details  
21 of coming to Dallas. Did you ultimately take Basil Rallis  
22 to tour Cascade Affordable Housing?

23 A. No.

24 On the 18th, I had my pickup truck and I  
25 had a full truck. I had four people. Stan Harrelson, who

1 is a principal and signer of all the Cascade documents, was  
2 in the front seat. There are two representatives from their  
3 investment group, I believe -- and I may be wrong -- Idaho  
4 Insured Teachers Retirement, something like that. And the  
5 other gentleman I think -- I don't remember. He could have  
6 been with RBC. I just don't remember --

7 Q. Okay.

8 A. -- who the other person was. But I definitely  
9 recall Stan and the two people from the investor side.

10 Q. All right. So Stan Harrelson is the person who  
11 actually, ultimately, signed the purchase agreement for  
12 Cascade?

13 A. Yes, ma'am.

14 Q. Okay. And the other -- and some of the other  
15 folks were investors for the potential purchaser?

16 A. Yes, ma'am.

17 Q. Okay. And did you ultimately meet with  
18 Brian Potashnik? Or when's the next time -- in March.  
19 I'm sorry. In March, did you meet with Brian Potashnik?

20 A. Yes, I met with Brian once -- pardon me -- excuse  
21 me -- on March 14th, 2007, at Kuby's for breakfast.

22 Q. And at this meeting, did you drop off some  
23 documents?

24 A. Yes.

25 Q. And generally speaking, what were those documents?

1           A.    They -- they were a full page of additional  
2   discussion points that we went through. There was an  
3   attachment to my thoughts on past earned bonuses as -- and I  
4   believe that was it. I think -- or, no, there was also a  
5   poorly written amendment to the employment agreement for the  
6   three-percent --

7           Q.    All right.

8           A.    -- handshake deal.

9           Q.    I'm handing you Plaintiff's Exhibit 64.

10                   MR. DONOHUE: Your Honor, on exhibit  
11   Plaintiff's 63 --

12                   THE COURT: Uh-huh.

13                   MR. DONOHUE: -- there are redactions that  
14   are needed.

15                   MS. GIBSON: Your Honor, I looked at that  
16   but defendants have already offered the same document as  
17   Defendants' 14.

18                   THE COURT: Is it in evidence?

19                   MS. GIBSON: I believe it was.

20                   MR. L. FRIEDMAN: You know, we pointed  
21   it out and ask that it be substituted by --

22                   MS. GIBSON: This was when Mr. Friedman  
23   started to show it and then offered it and I had no  
24   objection. This is in connection with questioning Ms. Vikki  
25   Carpenter.



1 MR. L. FRIEDMAN: May we approach? The  
2 Court said we could redact it.

3 (Sidebar conference held)

4 Q. (By Ms. Gibson) Okay, and in Exhibit 63 this is  
5 your effort to document the handshake deal and what you --

6 MS. GIBSON: Oh, plaintiff offers 63.

7 THE COURT: 63 is admitted after the  
8 redaction and 14 will be substituted with the 14-1 or 14A.

9 MR. DONOHUE: Thank you, Your Honor.

10 Q. (By Ms. Gibson) With -- is this your effort at  
11 memorializing agreements or what you thought you were owed  
12 in past-due bonuses?

13 A. Yes, ma'am.

14 Q. Okay.

15 And did you also, you or your wife, use  
16 sample agreements from the Internet and try and put them  
17 together?

18 A. Not -- not this particular one.

19 Q. Okay.

20 A. Or may have -- it may have been something small,  
21 but I used a format from a former colleague.

22 Q. Okay. And so part of the format you used here is  
23 from the form that Keith Jones sent to you in January?

24 A. Yes.

25 Q. Okay. And in connection with using this form, did

1       you make a mistake in the three-percent calculation?

2           A.     Yes, I did.

3           Q.     Okay.

4                   MR. L. FRIEDMAN: I'm sorry.

5           Q.     (By Ms. Gibson) And --

6                   MR. L. FRIEDMAN: I'm sorry. What did he  
7       say?

8                   MS. GIBSON: He said, yes, I did make a  
9       mistake.

10          Q.     (By Ms. Gibson) Okay. And is this the mistake?

11          A.     Yes, it is.

12          Q.     Okay. And you also tried to add or get something  
13       more; for example, capping closing costs at a maximum of  
14       three percent?

15          A.     Yes. That's stemming from our -- Brian and my  
16       original calculation of what we anticipated closing costs  
17       would be for the transaction at the time.

18          Q.     Okay. You're talking about --

19          A.     So I used that.

20          Q.     Are you talking about in October of 2006 when  
21       Brian Potashnik announced the formula?

22          A.     Yes.

23                   MR. L. FRIEDMAN: Leading.

24          A.     Yes, ma'am.

25          Q.     (By Ms. Gibson) Okay. And at that time, had

1       you-all --

2                       MR. L. FRIEDMAN: I didn't get a ruling.

3                       THE COURT: Objection's sustained.

4               Q.     (By Ms. Gibson) At that time, did Brian give you  
5     an estimate?

6               A.     Yes.

7               Q.     And the estimate -- the estimate he gave you was  
8     based on what in connection with closing costs?

9               A.     Three percent of the transaction for normal  
10    closing costs, broker fees, title, legal, etcetera,  
11    etcetera.

12              Q.     All right. And with respect to annual bonuses  
13    you're asking for 600,000?

14              A.     Yes.

15              Q.     Okay. And is that what you -- is that what Brian  
16    had told you or is that -- what is that number?

17              A.     That is what I proposed since we were unable to  
18    get together for -- to get really into the details of my  
19    compensation I had a game plan, and that was a proposal.

20              Q.     Okay. And did Brian Potashnik tell you that he  
21    would ultimately give you a total number?

22              A.     Yes.

23              Q.     Did he ever actually do that as far as a final  
24    total?

25              A.     Not -- not directly.

1 Q. And if you will turn to the page that's Bates  
2 labeled Carpenter 13, do you see on Paragraph 3?

3 A. Yes.

4 Q. These are notes you left with Brian?

5 A. Went over and left with him, yes. I was actually  
6 trying to catch a plane. I was supposed to be on vacation  
7 that week and --

8 MR. L. FRIEDMAN: Everything after went  
9 over and left with Brian is nonresponsive, Your Honor.

10 THE COURT: Overruled.

11 You've got a couple minutes before our  
12 morning break.

13 MS. GIBSON: Okay.

14 Q. (By Ms. Gibson) The -- do you recall the other  
15 side questioning your wife about this document?

16 A. Yes.

17 Q. And they implied that you wanted the bonuses in  
18 order to pay lawsuit expense and tax lien and family  
19 obligations?

20 A. Yes, that's what they said.

21 Q. Okay. Is that what the document actually says at  
22 3A?

23 A. No, it doesn't.

24 Q. Okay. What does it actually say?

25 A. It says I was depleting my savings due from the

1 lack of bonuses and increased wage salaries that I needed to  
2 pay my personal lawsuit expenses, tax lien, and daily family  
3 obligations as a result of payment deferral.

4 Q. Okay. So those had already been paid. You just  
5 paid them out of savings?

6 A. Yes, ma'am.

7 Q. Okay.

8 MS. GIBSON: And I think that might be a  
9 good place to stop.

10 THE COURT: Very good.

11 We'll take a 15-minute break, ladies and  
12 gentlemen. We'll see you back in 15 minutes.

13 (The jury exited the courtroom.)

14 (Recess taken)

15 (The jury entered the courtroom.)

16 THE COURT: Welcome back. Good morning  
17 still, ladies and gentlemen.

18 We'll continue with the trial.

19 Mr. Carpenter is the witness; Ms. Gibson is asking  
20 questions. And we'll go up till near the noon hour before  
21 we take our lunch break.

22 Ms. Gibson, if you'll pick up where you  
23 left off.

24 Q. (By Ms. Gibson) Mr. Carpenter, in the notes that  
25 you left with Brian Potashnik underneath your employment

1 agreement --

2 A. Yes. The amendment employment agreement.

3 Q. -- do you note specific amounts of annual bonuses  
4 that Brian Potashnik has said you've earned?

5 A. Yes.

6 Q. Okay. And what are those amounts?

7 A. Fairway, 50,000; McKinney, 50,000; Vegas, a  
8 hundred- to 200,000.

9 Q. And on top of that, had Mr. Potashnik said whether  
10 or not he believed he owed you additional past-due bonuses  
11 on top of those amounts?

12 A. From the very beginning, Brian anticipated me to  
13 be at the top of the range.

14 MR. L. FRIEDMAN: I'm sorry. I just don't  
15 hear him.

16 Can you move that microphone --

17 MS. GIBSON: Can you lean in?

18 MR. L. FRIEDMAN: -- closer to yourself?

19 THE WITNESS: Yes, sir.

20 MR. L. FRIEDMAN: Thank you.

21 THE WITNESS: I said, from conversations,  
22 Brian anticipated me to be at the top of the higher end of  
23 the range.

24 Q. (By Ms. Gibson) And the -- had he -- in addition  
25 to the 50,000 from McKinney, the 50,000 from Fairway, and

1 the 100- to 200- you hoped to source from Vegas, do your  
2 notes indicate that he also is acknowledging additional  
3 past-due bonuses?

4 A. Yes.

5 Q. And the -- on top of Fairway, Vegas, and McKinney,  
6 where is he hoping to source the additional bonuses from?

7 A. That would be developer fees --

8 Q. Okay.

9 A. -- coming in.

10 Q. And the spreadsheet that you left with Brian, why  
11 are you using those numbers?

12 A. Those were the numbers that I felt at the time for  
13 annual increase and bonuses earned for the period of time.

14 Q. Okay. So --

15 A. It was for -- it was for discussion purposes to  
16 work toward an agreed number.

17 Q. Okay.

18 If you would take a look at Exhibit 64, 65,  
19 and 66, please. Mr. Carpenter, these documents have been  
20 redacted. But other than the redactions, do you recognize  
21 64, 65, and 66 as Emails between you and Keith Jones while  
22 you worked at Southwest Housing?

23 A. Yes, ma'am.

24 Q. Okay.

25 MS. GIBSON: Plaintiff offers 64, 65, and

1 66.

2 THE COURT: Any objection?

3 MR. L. FRIEDMAN: Well, let's see which is  
4 which, Your Honor.

5 MS. GIBSON: They're numbered for you.

6 MR. L. FRIEDMAN: Okay. No objection as  
7 redacted, Your Honor.

8 THE COURT: Those three are admitted.

9 Q. (By Ms. Gibson) In the first Email on 64 the title  
10 is severance payroll?

11 (Pause)

12 A. Yes. Yes, ma'am. I'm sorry.

13 Q. And without getting into the details of anyone's  
14 particular deals, what is Keith Jones asking you to do here?

15 A. To suggest and/or to confirm what I would think in  
16 one of my employee's severance allowance -- stay, retention  
17 bonus, whatever we're calling it -- should be.

18 Q. Okay.

19 A. So we could collectively put together a  
20 corporate -- you know, a full corporate list.

21 Q. Okay. And the second page is redacted but  
22 it would have the names and what the recommendations are?

23 MR. L. FRIEDMAN: Objection, leading.  
24 Violation of the limine.

25 THE COURT: Don't lead the witness.



1 Q. (By Ms. Gibson) What -- without getting into  
2 details of anyone's deal, what, generally, is on the second  
3 page?

4 A. It's very simple form. It was the name of the  
5 employee, their position, and their hire date. And we had  
6 two columns of severance that we were looking at proposing.

7 Q. Okay. And when you talk about severance, is that  
8 the same or different from the stay bonus program?

9 MR. L. FRIEDMAN: I think that question's  
10 been asked and answered.

11 THE COURT: Overruled.

12 A. It's the same.

13 Q. (By Ms. Gibson) Okay. And on Exhibit 65, you and  
14 Keith Jones, the subject is bonus wages spreadsheet.

15 (Pause)

16 Are you not seeing it in front of you?

17 A. I'm sorry. Would you mind asking the question  
18 again?

19 Q. Sure.

20 A. I'm trying to -- since it's redacted and so small,  
21 I can barely read anything.

22 Q. Okay. Well, you can take a look at the screen.

23 A. Okay.

24 Q. Or that screen in front of you.

25 A. All right.

1 Q. Do you see this Keith Jones Email about bonus  
2 wages spreadsheets?

3 A. Yes.

4 Q. Okay. And he's asking you to check people for  
5 management. Is this the same stay bonus program or is it  
6 different?

7 (Pause)

8 A. I'm -- I'm not a hundred percent certain, but I  
9 think it's a different analysis of how to track the stay or  
10 severance by using the percentage of salary versus --

11 Q. Okay, don't --

12 A. Okay.

13 Q. -- don't talk -- sorry.

14 A. Okay.

15 Q. Don't talk about deals.

16 Okay, but is it still an evaluation --

17 A. I believe so.

18 Q. -- in connection with that program? Okay.

19 A. Yes.

20 Q. And Exhibit 65 -- or 66. And this is -- is this  
21 just your response to him on the same incentive bonus  
22 program?

23 A. Yes, ma'am. It would have been updated at his  
24 request.

25 Q. And then as far as the timeline goes, do you

1 ultimately end up meeting with Brian after May 14th when he  
2 didn't show at the office?

3 A. I'm sorry?

4 Q. I'm going back to the timeline.

5 A. Okay.

6 Q. I believe when we had finished yesterday you had  
7 just talked about that you and Cheryl Potashnik and  
8 Brian Potashnik were going to head back to the office and  
9 Brian didn't show up.

10 A. That's correct. Brian and I had the breakfast  
11 meeting.

12 Q. Okay. And then when was your next meeting with  
13 Brian?

14 A. It was supposed to have been once we got back to  
15 the office. But it ended up being, I believe, a couple --  
16 two days, a couple days later.

17 Q. Okay.

18 I'm handing you Plaintiff's Exhibit 67. Do  
19 you recognize Exhibit 67 as additional notes to yourself in  
20 preparation for that meeting?

21 A. Yes, ma'am.

22 MR. L. FRIEDMAN: Do I have 67?

23 MS. GIBSON: Plaintiff offers 67.

24 MR. L. FRIEDMAN: Thank you.

25 Same objections, Your Honor, as I've stated

1 before.

2 THE COURT: All right. Overruled. 67's  
3 admitted.

4 MS. GIBSON: Okay.

5 Q. (By Ms. Gibson) And so in connection with the  
6 May 12, 2007 meeting you are discussing some of the same  
7 things?

8 A. Yes.

9 Q. Okay. Then what happens on a couple days later?  
10 Do you have what date that is? You said a couple days after  
11 Brian didn't show at the office.

12 A. May 16th.

13 Q. About? Okay.

14 And tell us what happens, the gist of what  
15 happened in that meeting.

16 A. The three of us were supposed to get together to  
17 make sure we're all on the same page and consummate the  
18 earned bonuses being separate from the three-percent bonus  
19 program.

20 At the beginning of the meeting,  
21 unfortunately, there was a phone call that related to the  
22 FBI investigation and it was very serious tension. Brian  
23 was on the phone with Mike Uhl, criminal attorney, and ended  
24 up leaving the --

25 MR. L. FRIEDMAN: Your Honor, this is

1 nonresponsive --

2 A. -- building.

3 MR. L. FRIEDMAN: -- to the question  
4 and it's narrative.

5 THE COURT: Break up your question.

6 MS. GIBSON: Okay.

7 Q. (By Ms. Gibson) And after that phone call, what  
8 did Brian do?

9 A. He left. He left the office.

10 Q. Okay. Did Cheryl Potashnik stay?

11 A. Yes, she did.

12 Q. Okay. And what did -- what did you and Cheryl  
13 talk about?

14 A. Well, after she composed herself -- she was upset,  
15 her crying -- she said I understand that we wanted to talk  
16 about the bonuses, your earned bonuses that hadn't been paid  
17 out versus the three-percent bonuses are to be separate  
18 bonuses. And she confirmed that they are separate bonuses.

19 Q. Okay. And what else did she say about what you  
20 were owed?

21 A. Well, that she would review the information that I  
22 gave Brian. I gave it also to her. That she would get back  
23 to me. And we continued the dialog.

24 I expressed, you know, conversation,  
25 conversation, but no delivery from my end. And she said

1 that, Jeff, I would never screw you. You've earned it. I  
2 appreciate what you do. You go above and beyond and you're  
3 a good employee and a good friend. She validated.

4 Q. Okay. And, you know, at the time you were talking  
5 to Will Hartsfield about documenting the deal and you were  
6 concerned about the written agreement with Southwest  
7 Housing, at some point did you research whether oral  
8 agreements were enforceable?

9 A. Yes, I did.

10 Q. Okay, in the time frame. And what did you find  
11 out?

12 MR. L. FRIEDMAN: Objection, Your Honor.  
13 It calls for a legal conclusion.

14 MS. GIBSON: It's his own research.

15 THE COURT: It's still a legal conclusion.  
16 Sustained.

17 Q. (By Ms. Gibson) And then what is -- what's the  
18 next thing that happened in connection with the asset sale?

19 A. The next good thing, a month transpires. Brian  
20 and Cheryl battle, continue battling with Cascade. And,  
21 finally, the amendments to the PSA, purchase sales  
22 agreement, was implemented. And the first wire transfer  
23 came in on July 17, 2007. I believe it was for \$1,850,000  
24 of earnest money. And that's the Email that Cheryl sent to  
25 Sara and myself saying it's celebration time.

1 Q. Okay. And what did y'all do to celebrate, just  
2 briefly?

3 A. Briefly, went in all smiles. Sara said, you know,  
4 Cheryl, I need your corporate card or I need a credit card.  
5 And Sara and I went to Sigel's and we bought a bottle of  
6 Cristal champagne and came back and we had a little  
7 celebration in Cheryl's office.

8 Q. Okay. Then when was the formal announcement to  
9 other employees about the sale?

10 A. That was the latter part of September around the  
11 20th.

12 Q. Okay. Were you involved in that?

13 A. Yes. I helped coordinate and was involved, but  
14 not much. Stefan (phonetic) was very involved.

15 Q. And then, without getting into details please,  
16 what -- what significant event happens, if any, in late  
17 September, early October of 2007?

18 A. I received a call from Brian to meet him and  
19 Cheryl. I believe Jack Potashnik was there and was giving  
20 me a update of the FBI investigation and informed that  
21 indictments may be -- may be issued anytime now and that we  
22 need to make sure that we keep a good face on the company.

23 Q. And -- I'm sorry. When was that?

24 A. That would have been the 29th and 1st time frame.

25 Q. Okay. And then with respect to the management

1 trans -- potential management transition for the asset sale,  
2 what is the next event that happened?

3 A. There was -- there was a big -- the take-over was  
4 announced that they have an agreement for November 1st  
5 transition, and the next big conversation was Brian and I  
6 having one on October 12, 2007.

7 Q. Okay, okay. So -- so now management transition is  
8 targeted for when?

9 A. November 1st transition. Not closing but  
10 transition of the management.

11 Q. Okay. And when is this meeting announcing the  
12 target date for transition?

13 A. It -- it was the first part of October. October  
14 4th or October 8th. I think there was a meeting with the  
15 corporate level people.

16 Q. All right.

17 And then you started to talk about a  
18 meeting with Brian Potashnik. Around when that -- when did  
19 the -- after this, when did the meeting with Brian Potashnik  
20 happen?

21 A. Brian and I met on October 12th at his house early  
22 in the morning after he took his children to school.

23 Q. Okay.

24 And during this meeting, what does  
25 Brian Potashnik tell you, if anything, about your -- what



1 y' all have been discussing about your deals?

2 A. Well, Brian was giving me an update of what was  
3 going on. I made -- I asked how much longer would I need  
4 to -- how much longer will you need me with the change in  
5 person -- you know, change in the management around the 1st.  
6 But most of the conversation was about the three-percent  
7 bonus, memorializing that or making sure that that's still  
8 confirmed, as well as the unpaid bonuses. Brian  
9 acknowledged that I earned both; that he said that as far as  
10 he's concerned, as of this day, that I fulfilled my  
11 obligation.

12 He -- he knew that I had a company chasing  
13 me and he mentioned American Housing Foundation by name was  
14 soliciting me. And so we talked a little bit about that.  
15 We talked about the Vegas rehab and the sale.

16 MR. L. FRIEDMAN: Objection, Your Honor.  
17 This is nonresponsive. Can we return to narrative?

18 THE COURT: Break up your questions.

19 MS. GIBSON: I'm moving up.

20 Q. (By Ms. Gibson) Did he tell you on the job with  
21 American Housing Foundation, did he tell you whether --  
22 whether you could go or stay? Or what'd he say about that?

23 A. He said that I could go at any time; that it would  
24 not impact our agreements as of that day.

25 Q. Okay. What do you mean by you could take the job

1 or stay and it wouldn't impact your agreements?

2 A. That I fulfilled my requirement for the  
3 three-percent sales proceeds bonus effective that day with  
4 Brian.

5 Q. Did he tell you whether or not you would still get  
6 paid if you decided to go ahead and at that point go to  
7 American Housing Foundation?

8 A. Yes, he did.

9 Q. What did he say?

10 A. He said that I would be paid.

11 Q. Even if you --

12 A. And I said I earned it. I fulfilled -- I  
13 fulfilled my obligation. He said -- in fact, he said, You  
14 should take the job.

15 Q. Okay. And when he said paid, is that even if you  
16 left?

17 A. Yes.

18 Q. Okay. And during that conversation, did  
19 Brian Potashnik tell you anything about, if you left, about  
20 your phone and laptop?

21 A. Yes.

22 Q. What did he say?

23 A. He said that I could keep those.

24 Q. Okay.

25 Okay. Did you -- did you stay?

1 A. Yes, I --

2 Q. Okay.

3 A. -- I stayed, yes.

4 Q. That's good.

5 Then what's the next meeting you had about  
6 Bri an and Cheryl about your sale proceeds bonus and unpaid  
7 annual bonuses?

8 A. On October 21st, we met for dinner at a little  
9 pizza restaurant near their house. And --

10 Q. And what were you told about the three-percent  
11 deal, the past-due annual bonuses?

12 A. That I would get paid but -- I get paid when they  
13 get paid. Basically, at closing.

14 Q. Okay. And did Cheryl say anything else to you  
15 about that?

16 A. She once again said that I would -- I would never  
17 screw you -- screw over you. That word.

18 Q. Okay. And did she saying anything about your  
19 value as an employee during that meeting?

20 A. Yes. She said I was a very valuable employee as  
21 well as a friend.

22 Q. Okay.

23 And then when's the next meeting? We're  
24 getting close to transition. What's the next meeting you  
25 have about how long you need to stay?

1           A. Spoke to Cheryl on the 29th of October and asked  
2 her what else do you need from me as far as transitioning  
3 the company, because everything is running smooth. Just  
4 wrapping up some of the payroll information, for the most  
5 part. And she asked me if I could stay through the -- until  
6 the consulting asset management agreement takes place; which  
7 was supposed to be implemented on November 1st. And I said  
8 that I would.

9           Q. Okay.

10                               And the management transition happened  
11 when?

12           A. November 1st.

13           Q. Okay. And so your work was -- your agreement to  
14 stay was fully done when?

15           A. According to -- Brian was accepting it as fully  
16 done on the 12th but definitely as of 11/1 or October 31st.

17           Q. Okay.

18                               And then after that, did you stick around  
19 for the rest of the week?

20           A. Yes.

21           Q. Okay. And --

22           A. November 1st I believe was Thursday. The 2nd was  
23 Friday.

24           Q. And then what's the next significant event that  
25 happened?

1           A.   Well, on the 1st, late in the afternoon after 5:00  
2 o'clock -- excuse me -- I received an Email from  
3 Keith Jones. Basically, it was my termination paperwork and  
4 severance package or severance agreement.

5           Q.   Okay.

6           A.   Excuse me. Separation agreement.

7           Q.   Okay. Same thing, though, as far as separating  
8 from the company?

9           A.   Yes.

10          Q.   Okay.

11                           And did that -- did that document they sent  
12 you confirm your deal?

13          A.   No, not at all.

14          Q.   What did it do?

15          A.   It basically said I had no rights to any of the  
16 agreements and that I would not be paid whether it's earned,  
17 you know. After my dismissal there would be no more  
18 payments of anything.

19          Q.   And what did they offer you in that proposed  
20 separation agreement?

21          A.   At first they offered \$50,000.

22          Q.   I mean what -- what pay items were in that  
23 agreement that Keith Jones sent to you?

24          A.   Oh, it was -- it was standard. It was PTO, any  
25 accrued vacation. I believe my deal had my written

1 employment agreement, had six weeks automatic severance when  
2 I would leave the company. It mentioned COBRA. And the  
3 separation agreement basically took -- would wipe out all  
4 the agreements that I have with Brian and Cheryl and the  
5 whole reason why I stayed.

6 Q. Okay. When you say it would wipe out all of your  
7 agreements, is that because it's requiring you to release --

8 A. Yes.

9 Q. -- all claims?

10 Did you sign it?

11 A. No.

12 Q. After that, did you continue to try and work  
13 something out with the Potashniks?

14 A. Yes, I did.

15 Q. Okay. And, ultimately, what did -- what happened  
16 with that?

17 A. Cheryl and I -- I gave it another try and  
18 submitted not the best of documents, but --

19 MR. L. FRIEDMAN: I'm sorry. I didn't hear  
20 that.

21 THE WITNESS: I said I submitted -- I  
22 believe I submitted another try at memorializing the  
23 situation. Cheryl said that she was going to -- that  
24 it would take her a few days before she could get to it.

25 MR. L. FRIEDMAN: This is nonresponsive,

1 Your Honor.

2 THE COURT: What was your question?

3 MS. GIBSON: I don't know.

4 THE COURT: Break it up then.

5 Q. (By Ms. Gibson) And so Cheryl asked you -- she  
6 asked you to send a proposal to her?

7 A. Yes.

8 Q. Okay. And had y'all worked that out, would that  
9 have been a new deal?

10 A. Yes, it would have.

11 Q. Okay. Did you still have a deal at that point,  
12 your handshake deal with Brian?

13 A. Yes.

14 Q. And the --you know, we talked earlier about the  
15 formula, that you picked up -- the formula picked up some  
16 language from the form Keith Jones gave you?

17 A. Yes, ma'am.

18 Q. Okay. Did you ultimately correct that formula? I  
19 mean here in this case have you corrected the formula.

20 A. Through whether -- through the -- through the  
21 legal proceedings or deposition, yeah.

22 Q. And -- but notwithstanding that mistake, had you  
23 and Brian Potashnik always talked about three percent of the  
24 total of sellers' gross revenue --

25 MR. L. FRIEDMAN: Your Honor, this is

1       I eadi ng.

2                       MS. GIBSON: I'm asking about what they  
3       talked about on formul a.

4                       MR. L. FRIEDMAN: No, she's telling him the  
5       answer.

6                       THE COURT: Ri ght.

7                       MR. L. FRIEDMAN: He can read the answer  
8       hi msel f.

9                       THE COURT: Ri ght.

10       Q.     (By Ms. Gibson) What had you -- notwi thstandi ng  
11       that document, what was the formul a on the three percent  
12       that you and Bri an had always talked about?

13       A.     Three percent gross sales, mi nus normal cl osi ng  
14       costs, mi nus any sales proceeds bonuses to selected  
15       employees. Thus, the net proceeds.

16       Q.     Okay.

17                       MR. L. FRIEDMAN: I'm sorry. Selected  
18       employees and what el se?

19                       THE WITNESS: Thus, that woul d gi ve us the  
20       net proceeds.

21       Q.     (By Ms. Gibson) And di d i t help you or hurt you to  
22       make that correcti on?

23       A.     Hurt. I t hurt me because i t deducts a si gni fi cant  
24       amount of doll ars that was paid out to -- for severances or  
25       bonuses or whatever we're calli ng i t.



1 Q. And was that the truth of your deal?

2 A. Yes.

3 Q. Mr. Carpenter, I am handing you Plaintiff's  
4 Exhibit 68.

5 MR. L. FRIEDMAN: Thank you.

6 Q. (By Ms. Gibson) Do you recognize Exhibit 68 as an  
7 Email from Brad Bloomer to you while you worked at Southwest  
8 Housing?

9 A. Yes, I do.

10 MS. GIBSON: Plaintiff offers Exhibit 68.

11 THE COURT: Any objection?

12 MR. L. FRIEDMAN: No objection.

13 Whoa, whoa, whoa. Same objection,  
14 Your Honor.

15 THE COURT: All right.

16 MR. L. FRIEDMAN: This came in for the  
17 first time last night. Same objection.

18 MS. GIBSON: It's not. It was produced  
19 long ago. It's C0096124.

20 MR. L. FRIEDMAN: Not on the exhibit list.  
21 No Bates stamp came in last night. Same objection.

22 THE COURT: Overruled. Sixty-eight is  
23 admitted.

24 Q. (By Ms. Gibson) Okay. So this Email from  
25 Brad Bloomer is on October 31, 2007. And who is

1 Brad Bloomer?

2 A. Head of IT.

3 Q. Okay.

4 And what is he asking you to do?

5 A. Please keep in mind that we need to make a backup  
6 of your laptop before you take it with you.

7 Q. Okay. And did Southwest Housing make a backup  
8 copy of your laptop before you took it with you?

9 A. Yes. They cloned it.

10 Q. With respect to the damages calculation, did you  
11 see me run through those with Cheryl Potashnik Geiser on the  
12 three percent?

13 A. Yes.

14 Q. Okay. And I'm handing you what's been marked  
15 Exhibit 69.

16 MR. L. FRIEDMAN: Thank you.

17 Q. (By Ms. Gibson) If you'll take a look at Exhibit  
18 69, is that an accurate summary of all of the calculations  
19 from the Cascade closing documents and Cheryl Potashnik as  
20 to your damages calculation for the three percent?

21 MR. L. FRIEDMAN: Objection, Your Honor.  
22 Lack of foundation.

23 THE COURT: He hasn't answered the question  
24 yet.

25 MR. L. FRIEDMAN: This is a compilation.

1 It doesn't contain the documents that were the source of  
2 these numbers.

3 THE COURT: All right.

4 Is this a document created for litigation  
5 or an original document?

6 MS. GIBSON: No. This is a -- this is a --  
7 it's a demonstrative but it's also a summary of voluminous  
8 documents with --

9 THE COURT: You can use it as a  
10 demonstrative then, but are you offering it into evidence?

11 MS. GIBSON: I was going to offer it as  
12 a -- I offer 69 as a summary of voluminous records.

13 MR. L. FRIEDMAN: As a demonstrative, I  
14 have no objection.

15 THE COURT: All right.

16 MR. L. FRIEDMAN: As a summary, we're  
17 entitled to the documents that these figures would derive  
18 from.

19 THE COURT: Okay.

20 MS. GIBSON: And they're -- they're listed.

21 THE COURT: Let me give you a ruling. The  
22 objection's sustained, but you can use it as a summary.

23 MS. GIBSON: Okay.

24 THE COURT: As a demonstrative summary.

25 MR. L. FRIEDMAN: Thank you.

1 MS. GIBSON: Okay.

2 Q. (By Ms. Gibson) And this, the net proceeds to  
3 seller after closing costs, based on all of these closing  
4 amendments, do you agree with that total?

5 A. Yes.

6 Q. Okay. And you -- and on the total for stay  
7 bonuses paid to other employees you used what  
8 Cheryl Potashnik testified to?

9 A. Yes, during the --

10 Q. Okay.

11 A. -- deposition.

12 Q. And you know -- you have an understanding in this  
13 case that we asked for those numbers from documents from the  
14 other side?

15 A. Yes.

16 MR. L. FRIEDMAN: Objection, leading.

17 Q. (By Ms. Gibson) Did they --

18 MR. L. FRIEDMAN: Leading. Leading and  
19 violates the limine.

20 THE COURT: All right.

21 The total doesn't violate the limine.

22 Overruled.

23 A. No, we did not receive the information from the  
24 other side.

25 Q. (By Ms. Gibson) And so the -- what's the total net

1 sales price?

2 A. I'm sorry?

3 Q. What -- at the top of that document, what are the  
4 total sellers' net proceeds?

5 MR. L. FRIEDMAN: Can I take the witness on  
6 voir dire?

7 THE COURT: Overruled.

8 Q. (By Ms. Gibson) So, Jeff --

9 A. Yes.

10 Q. -- on Exhibit 69, what is the total --

11 A. Oh.

12 Q. -- at the top, net sale proceeds to sellers?

13 A. \$32,999,032.39.

14 Q. Okay. And what was the amount of stay bonuses  
15 paid to others from Cheryl Potashnik's testimony?

16 A. 2,100,000.

17 Q. Okay. And in connection with the net sale  
18 proceeds, did you undertake to investigate whether closing  
19 costs were reasonable or anything else?

20 A. We looked at them, but it was --

21 MR. L. FRIEDMAN: I only think of two  
22 answers to that question, Your Honor.

23 MS. GIBSON: It's okay. I'll --

24 MR. L. FRIEDMAN: Nonresponsive.

25 Q. (By Ms. Gibson) Jeff, just did you -- well, let me

1 ask it this way. Did you use all or less than all of the  
2 closing costs that Southwest Housing listed on the  
3 closing --

4 A. We used all closing costs listed.

5 MR. L. FRIEDMAN: Objection, leading.

6 THE COURT: Overruled.

7 Q. (By Ms. Gibson) Okay. And if you take the formula  
8 of three percent, what is the total of the three percent?  
9 What's the three percent amount come down to?

10 A. 926,970.

11 MR. L. FRIEDMAN: I'm sorry. Can you give  
12 it to me again?

13 THE WITNESS: 926,970.

14 Q. (By Ms. Gibson) Sorry. Let me write that again.

15 Okay. And we have gone over your annual  
16 bonuses calculation before, but what is the total on annual  
17 bonuses past due based on what Brian said before you left?

18 A. Brian -- 400,000.

19 MR. L. FRIEDMAN: I'm sorry. What was the  
20 400,000?

21 MS. GIBSON: Annual. Past-due annual  
22 bonuses based on what Brian Potashnik said before he left.

23 Q. (By Ms. Gibson) Jeff, you -- you ultimately  
24 recorded Brian and Cheryl after you got that proposed  
25 separation agreement releasing all of your claims?

1 A. Yes.

2 Q. You remember that? Okay.

3 What was your intent in doing that?

4 A. My intent was only to see why they sent me the  
5 separation agreement that would basically nullify all of our  
6 agreements.

7 Q. Why, during that conversation, did you not speak  
8 up and defend yourself and say this was the deal?

9 A. I was stunned. I was dumbfounded. I was hurt. I  
10 was angry. I had a lot of different emotions.

11 I probably should have, but I was  
12 listening.

13 Q. And you continued to forward some -- even then you  
14 continued to forward some work materials to Brian Potashnik?

15 A. Yes.

16 Q. Okay. What was the subject matter of what you  
17 were sending?

18 A. It had to do with the sale of Las Vegas.

19 Q. Las Vegas what?

20 A. The Las Vegas apartment community.

21 MS. GIBSON: Pass the witness.

22 THE COURT: All right.

23 Mr. Friedman?

24 MR. L. FRIEDMAN: Yeah. Thank you.

25

CROSS-EXAMINATION

BY MR. L. FRIEDMAN:

Q. Mr. Carpenter, how are you?

A. Fine. Thank you.

MR. L. FRIEDMAN: Your Honor, I just want to move my easel up here --

THE COURT: All right.

MR. L. FRIEDMAN: -- if you don't mind.

(The easel is being moved.)

MR. L. FRIEDMAN: I want you to be able to see it too.

THE COURT: That's fine.

You may want Mr. Donohue to see it.

MR. L. FRIEDMAN: He knows it by heart.

Q. (By Mr. L. Friedman) Mr. Carpenter?

A. Yes, sir.

Q. You have a remarkable memory.

A. Thank you.

Q. You agree with me, right?

A. I have a good memory.

THE COURT: You have to speak into the microphone.

His question was do you agree with him.

THE WITNESS: Yes.

Q. (By Mr. L. Friedman) You have a remarkable memory



1 of dates and details; isn't that correct?

2 MR. L. FRIEDMAN: Can I have my markers?

3 A. For the items discussed, yes.

4 Q. (By Mr. L. Friedman) And a remarkable memory for  
5 what's happened over the past 10 years in this case or  
6 longer, 14 years?

7 A. Yes. Very memorable to me.

8 Q. Dates, times, places, and exactly what was said?

9 A. Yes.

10 Q. Tell me what the date was that you made your deal,  
11 alleged deal, with Brian Potashnik. And let's see if you  
12 can do it without looking at your script.

13 MS. GIBSON: Object. Vague as to which  
14 deal.

15 THE COURT: Let me -- don't --

16 MR. L. FRIEDMAN: Well, I'm not asking him  
17 to read anything. I just wanted to see if he can do it by  
18 memory.

19 THE COURT: Then ask him to --

20 MR. L. FRIEDMAN: This is the most  
21 important question he has.

22 THE COURT: Okay. Fair enough.

23 Don't approach the witness without  
24 asking --

25 MR. L. FRIEDMAN: All right.

1 THE COURT: -- and go grabbing things from  
2 him.

3 He's asking you to not look at --

4 Q. (By Mr. L. Friedman) Without looking at your  
5 script, can you tell me the date you made your deal, alleged  
6 deal, with Brian Potashnik?

7 A. On or around -- he told me the --

8 Q. I didn't ask you on or around. I asked you what  
9 is the date you made this very important deal with  
10 Brian Potashnik. You've had 10 years to think about it.  
11 You've told this story a hundred times. You've told it  
12 three or four times since this trial started.

13 MS. GIBSON: Object to --

14 THE COURT: Let him answer your first  
15 question.

16 MR. GIBSON: -- counsel --

17 Q. (By Mr. L. Friedman) What is the date you made  
18 your deal, alleged deal, with Brian Potashnik?

19 MS. GIBSON: Object. Vague as to which --

20 THE COURT: Overruled. We're here for a  
21 specific --

22 THE WITNESS: Can I please express it  
23 was -- I want to say it was May 14th?

24 MR. L. FRIEDMAN: Okay.

25 Today is January 29th?

1 THE COURT: Yes.

2 Q. (By Mr. L. Friedman) All right. So I'm going to  
3 date this January 29th, '18.

4 And the deal was -- you said May 14th.  
5 That's the deal, May 14th?

6 A. Yes.

7 Q. The deal was May 14th.

8 And if you would tell me again what the  
9 ingredients of that -- May 14, 2000?

10 A. '6.

11 Q. All right. And what were the ingredients of the  
12 deal you made, the alleged oral deal that you're trying to  
13 enforce in this case? Just list them for me, one, two,  
14 three, four, five, without reading anything.

15 A. One moment, please.

16 Q. Sure. Take 10 years if you need.

17 THE COURT: Mr. Friedman.

18 MS. GIBSON: Object to the commentary.

19 THE COURT: Sustained.

20 A. The deal date of the three percent was not May  
21 14th. It was October 13th, I believe.

22 Q. (By Mr. L. Friedman) All right. Change your mind  
23 now?

24 MS. GIBSON: Object to the --

25 MR. L. FRIEDMAN: This is

1 cross-examination. I'm asking the witness if he's changed  
2 his mind.

3 THE COURT: Okay. Let him answer.

4 A. Yes.

5 Q. (By Mr. L. Friedman) I'm going to cross out May  
6 14th. And what date would you like me to put in, put on the  
7 board now, without reading your script?

8 A. I don't have anything in front of me.

9 Q. Okay.

10 A. October 13th.

11 Q. What year?

12 A. '06.

13 Q. And what are the ingredients of the deal you're  
14 trying to enforce in this case?

15 A. The three-percent sale proceeds bonus.

16 Q. One, three percent of sales proceeds. Is that  
17 accurate?

18 A. Minus --

19 Q. Hold it. Can't write that fast.

20 A. You may want to put net after of three percent.

21 Q. I want to know what the deal is you made with  
22 Brian on May 14 through October 13, 2006, as you made it  
23 that day. You hugged, you shook, you bump? What was the  
24 deal you made that day?

25 A. Okay, I'll give you the formula.

1 Q. Okay.

2 A. Three percent of the sales proceeds minus --

3 Q. All right, I'm going to say minus.

4 A. -- in Brian's terms, normal closing cost.

5 Q. Normal closing cost.

6 A. Of which we estimated, approximately, three  
7 percent.

8 Q. On that day?

9 A. On that day.

10 Q. You and Brian agreed that the normal closing costs  
11 would be three percent of what?

12 A. Of the sales price.

13 Q. All right. Estimated three percent.

14 What else?

15 A. Minus sales proceeds bonuses, severance --

16 Q. Wait a second. Minus what else?

17 A. Whatever we want to call it. Minus sales proceeds  
18 or severance bonuses paid to corporate employees.

19 Q. All right. We're still on October 13, 2006.

20 Is there anything else that comprised the  
21 agreement you made, alleged that you made with  
22 Brian Potashnik on October 13, 2006?

23 A. Well, we're using the sale amount based off of a  
24 proposed LOI of \$36 million to determine that.

25 Q. I just want to know the ingredients of the deal

1       you made.

2           A.     Well, that is very important to the deal to get  
3       down to the dollar amount. So if it's 36 million at that  
4       time and ultimately the PSA was 37 million, we used 36 --

5           Q.     Just give me list one, two, three. Is there  
6       anything else?

7           A.     The sales proceeds bonus to me was calculated to  
8       be, approximately, plus or minus 1,020,000.

9           Q.     Are there any other minuses that you agreed to,  
10       allegedly agreed to with Brian Potashnik on October 13,  
11       2006?

12          A.     No.

13          Q.     So with regard to your alleged three percent I can  
14       draw a line here and then put plus -- what do you call the  
15       other bonus? Performance bonus? What did you call it on  
16       October 13th, 2006?

17          A.     The sales proceeds bonus.

18          Q.     All right.

19                       Then you were about to tell me some other  
20       bonus.

21          A.     Well, the --

22          Q.     We're not looking.

23          A.     I'm not. I'm just moving, sir --

24          Q.     Okay.

25          A.     -- 'cause I can't see it.

1 Q. Let's put it to where you can see it.

2 A. Thank you.

3 Q. Let's move it back so your lawyer can see it.

4 A. During that conversation we focused on the  
5 three-percent sales proceeds bonus and just briefly skirted  
6 the outstanding earned bonuses.

7 Q. Okay. So there was no agreement with regard to  
8 earned bonuses on that day?

9 A. On that particular day.

10 Q. Okay. No agreement regarding earned bonuses on  
11 that day.

12 Mr. Carpenter, your testimony today is that  
13 this board that I've written represents the agreement that  
14 you are here to enforce against the defendants in this case,  
15 correct?

16 A. Yes.

17 Q. And that's your testimony today?

18 A. Yes.

19 Q. And your testimony to this jury is that you have  
20 been consistent in your attempts to enforce this agreement  
21 that you allege you made with Brian Potashnik on October 13,  
22 2006?

23 A. I have --

24 Q. Only asked if you'd been consistent --

25 A. No, I haven't been consistent.

1 Q. -- to enforce this agreement.

2 A. I've made a mistake in proposing when they asked  
3 me to put it in writing, when they said they were going to  
4 put it in writing. I have left off the severance bonus paid  
5 to corporate employees. That was left off on the proposal.

6 MR. L. FRIEDMAN: I'm going to say that --  
7 I'm going to object as being nonresponsive.

8 THE COURT: Okay. Do your best to answer  
9 only the question. His question was have you been  
10 consistent.

11 MR. L. FRIEDMAN: Let me ask it  
12 differently.

13 Q. (By Mr. L. Friedman) Mr. Carpenter, you have not  
14 been consistent in attempting to enforce the agreement you  
15 allege you made with Brian Potashnik on October 13th, 2006.  
16 Isn't that true?

17 A. I have made an error.

18 Q. Okay. For whatever reason, you haven't been  
19 consistent; isn't that correct?

20 A. As I said, I made an error on the bonus.

21 Q. I'm going to take that as a yes. You have not  
22 been consistent.

23 So I'm going to say since October 13, 2006,  
24 one, not consistent. Two, made mistakes, correct?

25 A. Regarding?



1 Q. You've made mistakes in attempting to enforce what  
2 you say was an oral agreement you made on October 13th,  
3 2006. You admit you made mistakes.

4 A. I made mistakes trying to memorialize it that the  
5 company was supposed to do.

6 Q. Wasn't my question. My question is you made  
7 mistakes trying to enforce what you've testified to today  
8 was the oral agreement you made with Brian Potashnik on  
9 October 13, 2006.

10 A. I have not made mistakes on the oral agreement.  
11 Only when I have attempted to play lawyer and put it in  
12 writing.

13 Q. Wasn't my question. My question is you've made  
14 mistakes in your efforts to enforce the agreement that you  
15 made with Brian Potashnik on October 13, 2006; isn't that  
16 correct?

17 A. I have made an error.

18 Q. Okay. So to be accurate I'm going to put down  
19 made error.

20 Have you made more than one error?

21 A. Regarding the three-percent calculation?

22 Q. Your attempts to -- no. You have made more than  
23 one error in your attempts to enforce the agreement you  
24 claim you made with Brian Potashnik on October 6 [sic],  
25 2006 -- no, I'm sorry, October 13, 2006. You've made

1 several mistakes, haven't you?

2 A. With me, I made errors in trying to memorialize  
3 it --

4 Q. All right.

5 A. -- on my own, yes.

6 Q. So I'm going to put down made errors. And that's  
7 accurate. You've made errors, right? Correct? Accurate?

8 A. Yeah.

9 Q. Okay.

10 Okay. You've made counteroffers to  
11 Brian Potashnik; isn't that correct?

12 A. No, sir.

13 Q. Since October 13th, 2013 [sic], when you allege  
14 you've made this oral agreement --

15 THE COURT: You said 2013.

16 Q. (By Mr. L. Friedman) Since October 13th, 2006,  
17 you've made counteroffers to Brian Potashnik that are  
18 different from what you allege your agreement was on that  
19 date; isn't that correct?

20 A. No.

21 Q. Okay.

22 A. Only to try to memorialize.

23 Q. Is it your testimony today in front of the jury  
24 that you've never made a counteroffer to Brian Potashnik  
25 after October 13th, 2006? Yes or no?

1 A. No. Payout different.

2 Q. Okay, no counteroffer.

3 Mr. Carpenter, you made different proposals  
4 to Brian Potashnik since you allege you made an oral  
5 agreement him on October 13th, 2006.

6 A. That is what I was referring to as errors in where  
7 I should not have played legal. If Brian --

8 MR. L. FRIEDMAN: I'm just going to object  
9 to that as being nonresponsive.

10 THE COURT: Okay.

11 His question is that you made different  
12 proposals.

13 Q. (By Mr. L. Friedman) It is true, sir, that since  
14 you -- the oral agreement you allege you made with  
15 Brian Potashnik on October 13th, 2006, you have made  
16 proposals to him containing different terms than the terms  
17 you just testified to to this jury that you agreed to on  
18 October 13th, 2006. Isn't that true?

19 A. Yes.

20 Q. Yeah. So made proposals.

21 A. At that given time.

22 Q. And since October 13, 2006, you continued to  
23 negotiate with Brian Potashnik about the terms of a deal  
24 with you relating to your employment. Isn't that true?

25 A. I do not agree with that.

1 Q. So I'm going to put down your testimony today is  
2 you did not continue to negotiate. Is that accurate?

3 A. I didn't -- what was the question again?

4 Q. Since October 13, 2006, on the date you allege you  
5 made your deal with Brian Potashnik --

6 A. Uh-huh.

7 Q. -- for the terms that you testified, one, two,  
8 three --

9 A. Right.

10 Q. -- you continued to negotiate with Brian Potashnik  
11 about additional terms?

12 A. No. Suggest -- suggested examples of how to  
13 memorialize it, yes, but I'm steadfast to the -- to the  
14 three-percent formula.

15 Q. Okay.

16 You continued to negotiate with  
17 Brian Potashnik from October 13, 2006, by introducing  
18 different or additional terms to the agreement that you  
19 allege you made with him; isn't that correct?

20 A. That was only -- that was requested by the  
21 Potashniks of what I felt -- what I felt that was reasonable  
22 at the time.

23 Q. So I'm going to put down ES for that. Isn't that  
24 correct?

25 A. I remain to the original agreement when they've

1 asked to put it down in writing when they were supposed to  
2 put it in writing, not me. There has been modifications at  
3 that time.

4 Q. Okay. Who was supposed to put the -- this  
5 agreement in writing that you allege you made with  
6 Brian Potashnik?

7 A. Well, one, I didn't allege. Brian made the deal  
8 with me.

9 Q. Okay.

10 A. For number one.

11 Q. All right. So when we talk about that October 13,  
12 2006 deal you allege you made, if I say it or not, you  
13 understand that I'm saying I allege it?

14 A. Okay.

15 Q. You allege it, because I represent Brian and  
16 Cheryl Potashnik and all the defendants. And I'll  
17 understand that you say you made it, okay?

18 A. Okay.

19 Q. Who --

20 A. I was --

21 Q. -- who was supposed to memorialize it after you  
22 were --

23 A. The -- the --

24 Q. Who did you agree would memorialize it on the --  
25 at the time you made -- allegedly made this deal with

1 Brian Potashnik?

2 A. Brian said it would be memorialized, put in  
3 writing, and he mentioned Randy Alligood --

4 Q. Okay.

5 A. -- would be doing it.

6 Q. So I'm going to put -- if I put BP, will you know  
7 that's Brian Potashnik?

8 A. Yes.

9 Q. 'Cause if I spell out Potashnik I won't have room  
10 for anything else.

11 But I want to finish. Are you saying to  
12 the jury you didn't negotiate new or additional terms with  
13 Brian Potashnik since October 13th, 2006? You did attempt  
14 to negotiate additional, isn't that correct, for whatever  
15 reason?

16 A. I gave suggestions based on the situation at that  
17 time. I put it in writing. I did not do a great job, I  
18 admit, but it never was intended --

19 Q. Your lawyer said it was a bad job.

20 A. Excuse me. It was a horrible job. So put that on  
21 the record. But it was never intended to change the deal  
22 itself.

23 Q. Okay, we're going to get to that. But -- so I'm  
24 going to say you suggested additional and different terms.  
25 Would that be accurate?

1 A. Well, I didn't know how -- no terms -- none of  
2 those terms were ever proposed because I never received it  
3 in writing. So it was only a suggestion.

4 Q. I'm just looking for a truthful answer.

5 A. I gave a truthful answer.

6 Q. It's true that since October 13, 2006, you, for  
7 whatever reason, suggested additional and different terms to  
8 the oral agreement you allege you made on October 13th,  
9 2006. That's correct, isn't it?

10 A. I suggested some bad memorializing.

11 Q. You suggested additional and different terms;  
12 isn't that correct?

13 A. Not ultimately. Not intentionally.

14 Q. You unintentionally suggested additional and  
15 different terms. Is that how you want to put it?

16 A. If that -- that's fine.

17 Q. Is that what you did? When you suggested  
18 additional and different terms, are you telling the jury it  
19 was unintentional? I'll write it down.

20 A. The unintentional piece was leaving out the other  
21 employees. The other part that I believe you're referring  
22 to is the payout, and I did give suggestions on how the  
23 payout would be different than a hundred percent in closing,  
24 as Brian said my name would be on the closing documents.

25 Q. Well, you had the personal guarantees, things like

1 that. I mean, you added additional terms, didn't you?

2 A. I added horrible additional terms.

3 Q. Okay. And you added different terms; isn't that  
4 correct? Different terms than you allege you made on  
5 October 13th, 2006?

6 A. Yes.

7 Q. Okay. So I'm going to put --

8 A. Considering if they were ever read.

9 Q. I don't hear you.

10 -- added additional and different terms.

11 Do you want me to put horrible in there or is that a good  
12 enough shortcut?

13 A. Well, it's somewhat hard to say what's additional  
14 and what's different from what I would have received from  
15 the Potashniks if Randy Alligood would have submitted -- if  
16 I would have had it submitted. So I don't know what's  
17 different.

18 Q. We'll get to that one. We'll give you a chance to  
19 go over that.

20 Let's look at this for a minute. Can you  
21 see this?

22 MR. L. FRIEDMAN: Can everybody see that?

23 Did we start here today? Kuby? I don't  
24 think so.

25 Q. (By Mr. L. Friedman) Did we start here today?



1 Jeff Richards?

2 A. I don't believe we did.

3 Q. Or we started May 16th. We did this today, right?

4 A. I believe so.

5 Q. Let me ask you. What was the significance of  
6 January 6, 2006? Why was that date significant?

7 (Pause)

8 A. January 6, '06. If it is, I don't recall.

9 Q. All right.

10 A. I did not memorize the timeline.

11 Q. And what about May 21st, 2006? Why is that a  
12 significant date?

13 A. Oh, that was the day that I received a phone call  
14 from Brian to meet at his house, and that's when he told me  
15 about that he was selling the company and the assets.

16 Q. But you didn't make your deal on that day,  
17 correct?

18 A. No, sir. It came later once he was -- because he  
19 needed my involvement in it.

20 Q. And on October 13, 2006, there was no signed LOI;  
21 is that correct?

22 A. That's correct. I believe the LOI was a few days  
23 later. However I drafted the LOI was available.

24 Q. I'm going to -- okay, a draft of the LOI was  
25 available but it was unsigned and it was still a draft,

1 correct?

2 A. Right.

3 Q. And on December 7, 2006, why was that a  
4 significant date?

5 A. I'm sorry. Which day?

6 Q. December 7th, 2006.

7 A. That was Pearl Harbor Day.

8 Q. Yeah, that's right. Any other significance?

9 A. It may have been the date that I met with  
10 Rick Graf. I'm not exactly sure.

11 Q. And January 17th, 2007?

12 A. As I said, I did not memorize the timeline.

13 However, the timeline was built based off the notes, also  
14 confirmed by my calendar. I feel comfortable with the  
15 accuracy of the dates, for the most part.

16 Q. You and Ms. Gibson and David Wiley built the  
17 timeline?

18 A. No. I built the timeline.

19 Q. With Ms. Gibson's help. You didn't type this.

20 A. Yes, I did.

21 Q. It's your font?

22 A. It's on my computer, yes.

23 Q. And you typed it?

24 A. Yes.

25 Q. And you reviewed it with Ms. Gibson?

1 A. Yes.

2 Q. 'Cause I noticed when you were testi fying she had  
3 a copy and asked you questions and then you had a copy that  
4 you were reading from, right?

5 A. Yes.

6 Q. That's the truth, isn't it? Because when she --

7 A. I did not deny that.

8 Q. -- because when she -- you don't deny that.

9 Because when she asked you about these dates you were able  
10 to read off of that script and tell her precisely what  
11 happened on those dates. Isn't that true?

12 A. Well --

13 Q. Isn't that true, sir?

14 A. To some degree.

15 Q. Yeah. Because when she asked you what happened on  
16 December 7th, 2006, you looked down at your timeline. And  
17 what did you say?

18 A. First meeting with Rick Graf.

19 Q. Yeah, 'cause that's what it says on your script.

20 A. Yeah. I also just mentioned it to you when you  
21 asked me that.

22 Q. Yeah. And then --

23 A. December 7th, that was --

24 Q. -- and then when she asked you --

25 A. -- the meeting with Rick Graf as well.

1 Q. When she asked you about March 7, 2007, what did  
2 you say?

3 A. Well, let me check that.

4 Q. Yeah. Please do.

5 A. Which date?

6 Q. March 7, 2007.

7 A. It's the day that I met with Mr. Hartsfield.

8 Q. Yeah. That's what it says on the script, right?

9 A. It's not a script. Timeline.

10 Q. Excuse me. Timeline.

11 And so forth and so on. And I -- I counted  
12 40 different entries on this timeline that enabled you to  
13 testify when Ms. Gibson asked you questions. Am I accurate  
14 on that count?

15 A. If that's the correct amount.

16 Q. You can count it.

17 THE COURT: We're not counting.

18 Q. (By Mr. L. Friedman) Mr. Carpenter, without this  
19 timeline, you would not have been able to testify as  
20 accurately or at all the way you've testified here this  
21 morning. Isn't that true?

22 A. I would say it gave me a 10 percent, 15 percent  
23 edge, maybe.

24 Q. Or maybe more?

25 A. Because early on --

1 Q. Or maybe more? You agree with me it may be a  
2 little more?

3 A. Maybe not.

4 Q. But maybe more?

5 A. No, sir. These were --

6 Q. All right.

7 MR. L. FRIEDMAN: I'm going to stop now,  
8 Your Honor.

9 THE COURT: Okay.

10 Ladies and gentlemen, we'll take our lunch  
11 break. We'll take an hour and 10 minutes for lunch. We'll  
12 see you back at 5 after 1:00.

13 (The jury exited the courtroom.)

14 (Lunch recess taken)

15 (The jury entered the courtroom.)

16 THE COURT: Welcome back. Good afternoon,  
17 Ladies and gentlemen.

18 We're going to just pick up right where we  
19 left off. Our witness is Mr. Carpenter; Mr. Friedman is the  
20 examining attorney.

21 And, Mr. Friedman, if you'd pick up where  
22 you left off.

23 MR. L. FRIEDMAN: If I could, I would.

24 THE COURT: All right.

25 Q. (By Mr. L. Friedman) Mr. Carpenter, during the

1 break, to save a little time, I made a list of your  
2 immediate prior employment before you joined Southwest  
3 Management Company. And if you would confirm -- I'm  
4 sorry -- if you would confirm that prior to working at  
5 Southwest Management Company you were regional vice  
6 president with Village Green Companies.

7 A. Correct.

8 Q. And just briefly, what did you do at Village Green  
9 Companies?

10 A. We were in 11 states. I ran 10 of the 11 states.

11 Q. Property management?

12 A. Property management.

13 Q. Okay.

14 And, approximately, a little less than two  
15 years at Elkor Properties?

16 A. Property management in rehab.

17 Q. Okay, as president?

18 A. Acquisition rehab.

19 Q. As president?

20 A. Yes.

21 Q. And then a little under -- it was eight years, a  
22 little under or over?

23 A. I think it was slightly under.

24 Q. President of National Realty Management. Briefly  
25 you do that?

1           A.    That's correct. I was recruited from Elkor to  
2   National Realty.

3           Q.    Again, property management?

4           A.    Property management. Very similar company as  
5   Southwest Housing.

6           Q.    Okay. And then two years you were senior vice  
7   president of -- is it Fore Property?

8           A.    Fore Property Company.

9           Q.    Management -- Fore Property Company in Las Vegas;  
10   is that correct?

11          A.    Yes.

12          Q.    And what were your duties and responsibilities  
13   there?

14          A.    Property management.

15          Q.    Okay. So --

16          A.    And recruited to here from --

17          Q.    And recruited to Southwest Management.

18                    So before you got to Southwest Management  
19   you had a lot of good property-management experience?

20          A.    Yes, sir.

21          Q.    A lot of good senior-executive experience?

22          A.    Yes.

23          Q.    And you would classify yourself as a sophisticated  
24   businessman as you entered your employment with Southwest  
25   Management Company?

1 A. I would say yes.

2 Q. Okay. So -- and that was the case when you  
3 negotiated your employment contract. You were a  
4 sophisticated businessman?

5 (Pause)

6 Correct?

7 A. Hope so.

8 Q. Yeah. It wasn't the first contract you'd ever  
9 negotiated?

10 A. No.

11 Q. And you represented to Southwest Management that  
12 you would give them your best efforts --

13 A. Yes.

14 Q. -- while you worked there? And what does best  
15 efforts mean, sir?

16 A. All the skills, the talent, the -- the effort, the  
17 commitment that it took to try to make the company  
18 successful.

19 Q. That's full-time?

20 A. More than full-time, yes.

21 Q. And exclusive?

22 A. And exclusive.

23 Q. So I'm just going to put full-time and exclusive.

24 Now, going back to the deal that you  
25 allegedly made with Brian Potashnik on October 13th, 2006, I



1 didn't put down you said three percent of sales proceeds;  
2 which, at the time, on October 13, 2006, I think you said  
3 was \$36 million?

4 A. That was the LOI that we had at hand.

5 Q. Was -- did you and Brian agree to that?

6 A. That was the number we used as calculation.

7 Q. You used 36 million?

8 A. Used 36- and then deducted 2 million for the other  
9 costs. So, actually, 34- net.

10 Q. Closing cost \$2,000,000?

11 A. Between the two. Between those two minuses we  
12 used 2 million as an example.

13 Q. Okay. So 2 million. Okay.

14 And I was going to ask you if the deal that  
15 you made with Brian Potashnik had a beginning date and an  
16 ending date?

17 A. It did.

18 Q. And what is the beginning date?

19 A. The beginning date was the date, for the most  
20 part, of the LOI, the letter of -- letter-of-intent time  
21 frame.

22 Q. Can you put a date on it?

23 A. I believe it was October 16th, 2006.

24 Q. And did it have an ending date?

25 A. It had an anticipated ending date of April, May,

1 of 2007. That was anticipated close date.

2 Q. And that's what you agreed to with Mr. Potashnik;  
3 is that right?

4 A. At that time, yes.

5 Q. Okay.

6 Now, did you ever testify under oath that  
7 the beginning date that -- as part of the deal you made with  
8 Mr. Potashnik, the beginning date was October 13th, 2006,  
9 and the ending date was October 31st, 2007?

10 A. I used October 12th, 2007 --

11 Q. Just wasn't my question. My question is, Have you  
12 ever testified under oath at a prior time in this case that  
13 the beginning date of your alleged agreement with  
14 Mr. Potashnik was October 13th, 2006, and the ending date  
15 was October 31st, 2007?

16 A. With the delay and extensions, I did commit to  
17 October 31st.

18 Q. You did testify under oath --

19 A. Yes.

20 Q. -- of those two beginning dates --

21 A. Due to the extraordinary extenuating circumstances  
22 of the delays.

23 Q. Maybe I didn't make myself clear. Did you testify  
24 that part of the agreement you made with Mr. Potashnik on  
25 October 13th, 2006, had a beginning date and an ending date;

1 and that beginning date was October 13th, 2006, and the  
2 ending date was October 31st, 2007, on that date?

3 A. No, we did not specify that particular date.

4 Q. Okay. So let me pull up your deposition.

5 A. As I recall.

6 Q. Okay.

7 MR. L. FRIEDMAN: Do we have a line and  
8 page?

9 MR. J. FRIEDMAN: Page 83.

10 MR. L. FRIEDMAN: Page 83 of  
11 Mr. Carpenter's deposition taken January 18th, 2018.

12 And the lines?

13 MS. GIBSON: Sixteen to twenty-four.

14 MR. L. FRIEDMAN: Lines 16 to 24.

15 Wait till Ms. Gibson gets there.

16 Q. (By Mr. L. Friedman) Okay. If you remember, I was  
17 examining you.

18 A. That's what I look like?

19 (Video playing)

20 Q. "You said there was a valid contractual agreement.  
21 Is there a beginning date, as you stated there was, that you  
22 can give me in the terms of month, date, year?"

23 A. "A pure official, October thir -- started October  
24 13, 2006; ended October 31, 2007."

25 Q. "Okay. So we have a start date, October 13th,

1 2006; and we have an end date, October 31, 2007, correct?"

2 A. "Yes."

3 (Video ended)

4 Q. (By Mr. L. Friedman) Okay. So, Mr. Carpenter,  
5 does that refresh your memory that approximately two weeks  
6 ago when I took your deposition and asked you the same  
7 question your sworn testimony at your deposition was that  
8 the beginning date was October 13th, 2006, and the end date  
9 was October 31st, 2007?

10 A. Yes. With the extensions and the delay in the  
11 closings, the due diligence, the PSA being drafted, I  
12 committed to those dates. Brian said my responsibilities  
13 were ended October 12th, as discussed earlier.

14 MR. L. FRIEDMAN: I'm going to object to  
15 all of this as being nonresponsive, Your Honor.

16 THE COURT: All right.

17 Answer only the question he's asking.  
18 Remember Ms. Gibson will have a chance to ask you more  
19 questions.

20 THE WITNESS: Okay. Thank you.

21 Q. (By Mr. L. Friedman) Now, do you remember the  
22 dates, without looking at anything, that you entered into  
23 your employment agreement with Southwest Housing?

24 A. Like, 2/24 of '04.

25 Q. Okay, February of '04.

1 MR. L. FRIEDMAN: Do we have that  
2 employment agreement, Mr. Page?

3 Q. (By Mr. L. Friedman) And if I could call your  
4 attention to Defendants' Exhibit Number 2, if you look at  
5 it on the screen or the hard copy in front of you.

6 A. I don't have a hard copy.

7 Q. I'm sorry. Defendants' Exhibit Number 4. Screen  
8 or the hard copy in front of you.

9 A. There's no hard copy in front of me.

10 THE COURT: You can look at the screen.

11 THE WITNESS: I'm sorry. With the  
12 tri focal s i t would be easi er --

13 THE COURT: Okay.

14 THE WITNESS: -- wi th paper rather than  
15 screen.

16 Q. (By Mr. L. Friedman) Okay. Let me hand you  
17 Defendants' Exhibit Number 4.

18 A. Okay. Thank you, si r.

19 Q. Okay. Do you remember thi s employment agreement?  
20 And that's the one you signed on or about February 25th,  
21 2004, correct?

22 A. Yes.

23 Q. I want to go through thi s quickly. And the two  
24 parties to thi s agreement are yoursel f, Jeffrey W.  
25 Carpenter, which i s defined as the empl oyee. You're the

1 employee, correct?

2 A. Yes.

3 Q. And Southwest Housing Management, which is defined  
4 as the company.

5 So your employment agreement is with  
6 Southwest Housing Management, not with Southwest Housing  
7 Development, not with Affordable Housing Construction and  
8 not with any other company or person, correct?

9 A. As it's stated, yes.

10 Q. Say it again.

11 A. As stated, yes.

12 Q. Yeah. And your employment agreement was not with  
13 Cheryl Potashnik, correct?

14 A. It was with Brian, but Cheryl worked on it.

15 Q. I'm sorry. Say it again.

16 A. I said it was with Brian Potashnik but Cheryl  
17 worked on the agreement.

18 Q. You and Cheryl and Brian negotiated this  
19 agreement?

20 A. Yes.

21 Q. Yeah. The terms of this agreement were hard  
22 bargained for, weren't they?

23 A. I don't recall at the time.

24 Q. You spent two or three or four weeks bargaining  
25 for every term in this agreement; isn't that true?

1 A. I do not recall that.

2 Q. Oh, but you do recall you negotiated this  
3 agreement with Cheryl and Brian?

4 A. Yes.

5 Q. Okay. And you will acknowledge that this  
6 agreement is not with Cheryl Potashnik or Brian Potashnik  
7 individually?

8 A. It's with the -- the management company.

9 Q. Yeah. Okay, good.

10 Calling your attention to Paragraph Number  
11 2, you'll acknowledge that it states specifically that this  
12 is an at-will employment contract?

13 A. Yes.

14 Q. Correct?

15 And at-will means company can fire you or  
16 terminate you at any time and you can leave at any time?

17 A. Yes, sir.

18 Q. All right. And that's one of the provisions that  
19 you bargained for to be part of this agreement, correct?

20 A. No, sir. That was probably standard language in  
21 the agreement.

22 Q. Okay, well, let's approach it differently. You  
23 read this agreement before you signed it, correct?

24 A. Yes.

25 Q. And you understood it?

1 A. Yes.

2 Q. And you intended to comply with each and every  
3 term in this agreement when you signed it?

4 A. Yes.

5 Q. Okay. And you understood this and agreed to abide  
6 by these terms?

7 A. Yes.

8 Q. Okay.

9 MR. L. FRIEDMAN: Let's go to the next one.

10 Q. (By Mr. L. Friedman) Number three is duties.  
11 Quickly, the employee shall perform the duties and functions  
12 assigned to him from time to time, in the sole discretion of  
13 the company, and shall report to the president of the  
14 company or such other person as directed by the president.

15 I read that correctly?

16 A. Yes.

17 Q. And your job as executive vice president, for a  
18 salary of \$200,000 a year, was to do what the company asked  
19 you to do, correct?

20 A. Yes.

21 Q. And the company would express itself through the  
22 president, Brian Potashnik?

23 A. Yes.

24 Q. Or such other person as directed by the president,  
25 Brian Potashnik, correct?



1 A. Yes.

2 Q. So if he said do this task for Mark Jones, that  
3 would be something that would fit into this description?

4 A. Yes.

5 Q. Yeah. Okay.

6 Then it says employee agrees to devote his  
7 working time, attention, and energies to the performance of  
8 the business of the company and any of its affiliates  
9 which -- by which he may be employed. And the employee  
10 shall not, directly or indirectly, alone or as a member of  
11 any partnership or other organization or as an officer,  
12 director or employee of any other corporation, partnership  
13 or other organization, be actively engaged in or concerned  
14 with any other duties or pursuits which materially interfere  
15 with the performance of his duties under this agreement.

16 I read that correctly, right?

17 A. A mouthful. Yes.

18 Q. Yeah.

19 And where it says here you agree to devote  
20 your working time, attention, and energies to the  
21 performance of the business of the company, that consistent  
22 with what we talked about being your best efforts, correct?

23 A. That and for the general company as a whole. Yes.

24 Q. And when you say general company as a whole you're  
25 talking about --

1           A.     The organization as a whole.

2           Q.     Excuse me. -- you're talking about someone other  
3     than the contracting party. Is that what you're -- is that  
4     what you're alluding to?

5           A.     I'm alluding to the Southwest Housing was  
6     recognized as a comparable entity that we had different  
7     divisions within the company.

8           Q.     Yeah. And that's why it says that in the  
9     performance of the business of the company and any of its  
10    affiliates by which he may be employed. So, in other words,  
11    at the time you signed this agreement you contemplated that  
12    you may do assignments for Southwest Housing Development or  
13    Affordable Housing Construction or some other Southwest  
14    company, correct?

15          A.     Well, or be employed by, yes.

16          Q.     Yeah. Okay, good.

17                   And, also, that you would not be actively  
18    engaged in or concerned with any other duties or pursuits  
19    which materially interfere with the performance of your  
20    duties under this agreement. So when Jeff Richards  
21    testified that while you were working for Southwest Housing  
22    Management you were also consulting for American Housing  
23    Foundation, wouldn't that be something that materially  
24    interfered with the performance of your duties under this  
25    agreement, sir?

1 A. Absolutely not.

2 Q. Now -- now, you don't deny the fact that you were  
3 consulting for American Housing Foundation, your future  
4 employer, while you were being paid a \$200,000-a-year salary  
5 by Southwest Management, do you?

6 A. I disagree with Jeff Richards' use of the term of  
7 consulting.

8 Q. I see. So you disagree with the witness you  
9 brought here when he testified under oath that you were  
10 consulting with American Housing Foundation while you were  
11 working for Southwest Management Company, correct?

12 A. In that regard, yes.

13 Q. Okay.

14 So let's look at one of the exhibits that  
15 we have here.

16 MR. L. FRIEDMAN: Where's that -- no --  
17 bankruptcy proof of claim?

18 Q. (By Mr. L. Friedman) So --

19 MR. L. FRIEDMAN: May I approach,  
20 Your Honor?

21 THE COURT: Certainly.

22 Q. (By Mr. L. Friedman) -- Exhibit 61, which your  
23 lawyer introduced, is it up there?

24 MR. L. FRIEDMAN: Do you have that on  
25 the -- yeah. I think that's been admitted.

1 THE COURT: Uh-huh.

2 THE WITNESS: I jump from 52 to -- here it  
3 is.

4 MR. L. FRIEDMAN: Okay.

5 Q. (By Mr. L. Friedman) So Exhibit 61 is --

6 MR. L. FRIEDMAN: Put that up on the  
7 screen, Steve, please.

8 Q. (By Mr. L. Friedman) -- your exhibit.

9 (Off the record)

10 MR. L. FRIEDMAN: Well, do you have it?  
11 Just give me the Email. I'll put it up here.

12 Q. (By Mr. L. Friedman) Okay, this is Exhibit 61.  
13 Your lawyer admitted it this morning as a group of exhibits  
14 and the cover sheet is signed by you.

15 A. Uh-huh.

16 Q. It's your signature, right?

17 A. (Coughing). Excuse me. Yes sir.

18 Q. And this was a cover sheet transmitting documents  
19 that you submitted to the U.S. Bankruptcy Court in Amarillo,  
20 Texas, under oath, correct?

21 A. Yes.

22 Q. You have to answer verbally.

23 A. Yes.

24 Q. In order for you to recover against your  
25 succeeding employer for a claim for unpaid wages and unpaid

1 bonuses, correct?

2 A. Yes.

3 Q. And then I turn to Page 1 of your proof of claim  
4 signed by you on the bottom. Is that your signature, sir?

5 A. Yes.

6 Q. And you wrote in Jeffrey W. Carpenter?

7 A. Yes.

8 Q. That's your printing.

9 And then I look. The document is entitled  
10 Proof of Claim, correct?

11 A. Yes.

12 Q. Filed October 8, 2009. U.S. Bankruptcy Court for  
13 the northern district of Texas, right?

14 A. Yes.

15 Q. So if you look in the middle of the first page on  
16 the claim that you made against American Housing Foundation,  
17 you're claiming wages based on a debt that was incurred from  
18 10/24/07 to 4/7/09, correct?

19 A. No, sir.

20 Q. It doesn't say that?

21 A. That's what it says, but you said wages, and I  
22 don't --

23 Q. Okay, well, let's see.

24 A. It's -- it would be, probably, reimbursement  
25 for --

1 Q. Sir, sir, the debt was incurred from 10/24/07 to  
2 4/7/09. Is that what it says?

3 A. Yes, it is.

4 Q. Then you checked -- you checked the box. Where am  
5 I? You checked the box.

6 THE COURT: Are you asking, I think?

7 THE WITNESS: Immediately above it.

8 Q. (By Mr. L. Friedman) You checked the box. It says  
9 check this box if you have an unsecured priority claim. You  
10 checked that box, right, right there? Is that your X?  
11 That's your X.

12 A. I'm not sure. My attorney did it. But the  
13 X right above the date that was --

14 Q. Sir.

15 A. -- incurred --

16 Q. Sir.

17 A. -- was mine.

18 Q. Sir, that's your X or someone made that X on your  
19 behalf. Because after you read this and understood it and  
20 signed it Jeff Carpenter, you knew someone made that X on  
21 your behalf, right?

22 A. I didn't.

23 Q. Oh, "I didn't"?

24 A. I signed it but I didn't make the X. I signed  
25 what --

1 Q. Okay.

2 A. -- the bankruptcy attorney told me to sign.

3 Q. All right. Bankruptcy attorney did it and the  
4 bankruptcy knew you were making a claim for what, sir?  
5 Here's the other X. Say it.

6 A. Wages, salaries, commissions up to 4300 earned  
7 within 90 days before filings of bankruptcy petition.

8 Q. Okay. So you were making a claim for wages,  
9 salaries or commission earned between 10/24/07 through April  
10 7th, '09. And you will admit, sir, that your prior  
11 testimony said that you were paid by Southwest Management up  
12 through and including November 2nd, 2007, correct?

13 A. Yes, but your information's inaccurate.

14 MR. L. FRIEDMAN: Well, first, I'm going to  
15 object to everything after yes as being unresponsive. And,  
16 second, I'll just say the document speaks for itself.

17 THE WITNESS: Well, the document doesn't  
18 speak for itself. The X --

19 MR. L. FRIEDMAN: Is there an echo?

20 THE WITNESS: -- X right above --

21 THE COURT: Wait for him to ask a question.

22 Q. (By Mr. L. Friedman) Is there an echo?

23 The X right above says "other". Expense  
24 report on behalf of AHF and JWC paid out of pocket, travel,  
25 furnishings (that is in possession of AHF), and other

1 acceptable business-related expenses.

2 So what you're telling the jury is that you  
3 incurred business-related expenses for AHF while you were  
4 working full-time and being paid a full-time salary for  
5 Southwest Management, correct?

6 A. I worked a weekend doing a report.

7 Q. That's not the question I asked you.

8 A. I don't agree with your assessment.

9 Q. You worked for Affordable -- American Housing  
10 Foundation while you're being paid by Southwest Management.  
11 That's the truth, isn't it?

12 A. No, sir.

13 Q. And you never disclosed it to Brian or Cheryl  
14 Potashnik, did you?

15 A. Well, no, sir. Brian Potashnik said my job was  
16 completed 10/12.

17 Q. Wasn't my question. My question was you never  
18 disclosed this to Brian or Cheryl Potashnik. You kept it a  
19 secret from them, correct?

20 A. I did analysis on the weekend.

21 Q. Sir, you never disclosed it to Brian Potashnik.

22 A. I never disclosed it to Brian.

23 Q. Thank you.

24 And you were not only claiming expenses,  
25 sir, because the truth of the matter is your total claim was



1 \$420,499.28. Isn't that true? And I can only think of two  
2 answers. Yes, it is; or, no, it's not.

3 A. That is the truth.

4 Q. Thank you.

5 Let's go back to the employment contract.

6 A. Detailed on the front page.

7 Q. There's no question in front of you, sir.

8 MR. L. FRIEDMAN: Oh, Your Honor,  
9 Mr. Donohue, my better half, reminds me to ask the Court to  
10 admit Defendants' 4.

11 THE COURT: Defendants' 4?

12 MR. L. FRIEDMAN: The employment agreement  
13 under our --

14 THE COURT: Wasn't it already in?

15 MR. L. FRIEDMAN: -- under our label.

16 THE COURT: Okay.

17 MS. GIBSON: It's already admitted by both  
18 parties by agreement as 2 --

19 MR. L. FRIEDMAN: Okay.

20 MS. GIBSON: -- but I have no problem.

21 THE COURT: All right.

22 Did you want that in as Defendants' 4?

23 MR. L. FRIEDMAN: Well, let's admit it as 4  
24 because Mr. Donohue said to do it.

25 THE COURT: Okay. Fair enough.

1 Defendants' 4 is admitted.

2 MR. L. FRIEDMAN: And I'm a compliant  
3 lawyer.

4 Okay, go to A first, Compensation A.

5 Q. (By Mr. L. Friedman) All right. This calls for  
6 \$200,000-a-year annual salary. And to be clear, you're not  
7 making a claim for salary in this case; is that correct,  
8 sir?

9 A. That's correct.

10 Q. Okay.

11 Let's go to B. Now, B, I'd like to go  
12 through this quickly. I believe you testified you received  
13 \$50,000 bonus for year one. And you'll acknowledge that.  
14 We don't have to talk about it anymore.

15 A. I conceded, yes.

16 Q. Okay, so we don't have to talk about year one?

17 A. Correct.

18 Q. Going -- so your -- your claim is for bonuses in  
19 year two, three-and-a-half?

20 A. Correct.

21 Q. Correct?

22 And you'll work with me here. It says a  
23 detailed bonus plan will be provided to employee within 90  
24 days of the employment date. And everybody agrees that was  
25 not provided to you?

1 A. Correct.

2 Q. Correct?

3 And then it says annual changes made to the  
4 bonus structure will be at the -- help me with this -- sole  
5 discretion of the company.

6 A. That's what it says.

7 Q. And there's no disagreement about the language  
8 "sole discretion of the company", correct?

9 A. No.

10 Q. And, in fact, you made it a point to say in your  
11 interrogatory responses you and Cheryl Potashnik discussed  
12 it while you were negotiating your employment contract and  
13 she insisted that that language be in your contract?

14 A. She did.

15 Q. Okay. And that's how it got there?

16 A. Yes.

17 Q. All right.

18 And it wound up in your petition on several  
19 occasions?

20 A. Yes.

21 Q. Okay. So you'll agree with me now that for years  
22 two, three, and then a half or up to October 31st, any bonus  
23 to go to you would be at the sole discretion of the company,  
24 Southwest Housing Management. That's our starting point,  
25 sole discretion of the company, correct?

1           A.     Sole discretion of the company based on the  
2     profitability of the organization as a whole, yes, sir.

3                     MR. L. FRIEDMAN:   Okay.   Go ahead.   Let's  
4     go to the next one.   Next paragraph.   Okay.

5           Q.     (By Mr. L. Friedman) This is another provision you  
6     agreed to:   Termination of employment and the effect of  
7     termination.   Employee will not be entitled to any  
8     compensation or benefits pursuant to this agreement  
9     effective upon termination of employee's employment, the  
10    removal of employee from the position of executive vice  
11    president and/or upon employee's death, except as noted  
12    below.

13                    So we agree that you as the employee were  
14    not entitled, according to this contract, to any  
15    compensation or benefits effective upon your termination,  
16    correct?

17           A.     That's (clearing throat) -- pardon me.

18           Q.     You need water?

19           A.     Yes.

20                    MR. L. FRIEDMAN:   Can we have a bottle of  
21    water for him?

22                    THE WITNESS:   I have some.

23                    MR. L. FRIEDMAN:   He's got it.

24                    Take your time.

25                    THE WITNESS:   That is what the pair -- or

1 the sentence says. However, if I may, I don't believe  
2 that's in accordance with Texas law.

3 MR. L. FRIEDMAN: I'm going to object to  
4 anything after that's what the sentence says. About to give  
5 a legal conclusion.

6 THE COURT: Sustained.

7 Q. (By Mr. L. Friedman) All right. A -- Paragraph 7a  
8 says, In the event company terminates employee, employee  
9 will receive severance in an amount equal to six weeks of  
10 base salary in a lump sum payable upon such termination.

11 Did I read that correctly?

12 A. Yes, sir.

13 Q. And, in fact, on or about October 31, 2007, when  
14 you were terminated -- you with me?

15 A. When my position was eliminated, yes.

16 Q. When you were terminated -- I don't need help with  
17 the questions. When you were terminated you received and  
18 accepted six weeks of base salary upon your termination as  
19 severance, correct?

20 A. As stated in the agreement, yes.

21 Q. No, you accepted six weeks of salary. You took  
22 the check, you deposited it in your account, and you used  
23 the money, correct?

24 A. Yes. I noted that before.

25 Q. There we are.

1 And, in fact, Mr. and Mrs. Potashnik  
2 offered you an additional \$150,000 severance, which you  
3 turned down, correct?

4 A. Yes, because of the agreement that I had.

5 MR. L. FRIEDMAN: Everything after yes is  
6 nonresponsive. Your lawyer gets a chance to follow up.

7 THE WITNESS: Okay.

8 MR. L. FRIEDMAN: Next.

9 Q. (By Mr. L. Friedman) All confidential information  
10 relating to the company and its affiliates are the exclusive  
11 property of the company and its affiliates, and employee  
12 shall use all reasonable efforts to prevent any publication  
13 or disclosure thereof.

14 We don't have an argument that the  
15 confidential information of Southwest Housing Management and  
16 related companies belong to Southwest Housing Management and  
17 their related companies?

18 A. No.

19 Q. Okay. And --

20 A. The Southwest Housing information is Southwest,  
21 yes.

22 Q. Right.

23 And to this day you still have Southwest  
24 Housing Management's information, confidential information  
25 in your possession.

1 A. Permitted and --

2 Q. Sir.

3 A. -- with permission --

4 Q. Sir.

5 A. -- from the owner.

6 Q. You have Southwest Housing's confidential  
7 information in your possession?

8 A. Yes.

9 Q. And you've never returned it?

10 A. I was given permission.

11 Q. It's yes or no. Everybody knows what you're going  
12 to say. The answer to my question is, yes, you've never  
13 returned it, correct?

14 A. I have not returned the gift, no.

15 Q. Thank you.

16 Let's go to the next one. Okay, also in  
17 your contract was a provision for alternative dispute  
18 resolution: Right to injunction; remedies. You'll agree  
19 with me that alternative dispute resolution means let's find  
20 a way to resolve our disputes without going to court --

21 A. Yes.

22 Q. -- correct?

23 A. Uh-huh.

24 Q. And according to the contract you negotiated,  
25 read, understood and signed and agreed to comply with, in

1 the event of any dispute or claim arising from or relating  
2 to this agreement or breach thereof -- here's the important  
3 language -- or to any other aspect of employee's terms,  
4 conditions or benefits of employment or any other aspect of  
5 his contracts with the company, the parties shall use their  
6 best efforts to settle this dispute, claim, question or  
7 disagreement.

8 Now, you'll agree with me that that  
9 language would include this alleged oral agreement you had  
10 with Brian Potashnik?

11 A. I would have to rely on my counsel for that  
12 determination.

13 Q. I can't get an agreement from you based on your  
14 knowledge and experience and your understanding of this  
15 contract when you signed it that you were bound to negotiate  
16 in good faith before you took another step? That's the  
17 truth. You had an obligation to negotiate, correct?

18 A. The step we took --

19 Q. Sir --

20 A. I took legal advice.

21 Q. -- all I'm asking you is you had an obligation to  
22 negotiate and you didn't do it, correct? Whether you did it  
23 on legal advice --

24 A. Not in this fashion. Not in this fashion, no.

25 Q. Okay.



1 And then it says, After consulting and  
2 negotiating with each other in good faith and recognizing  
3 their mutual interests, attempting to reach a just and  
4 equitable solution satisfactory to both parties. If they do  
5 not reach a solution within a 30-day -- within a period of  
6 30 days, then, upon written notice by either party to the  
7 other, such dispute or claim shall be submitted within the  
8 next 60 days to a one-and-a-half-day mediation with a  
9 mediation fee -- I'm sorry -- to a one-half day mediation,  
10 with the mediation fee to be shared equally by the  
11 employee, that's you, and the company, Southwest Housing  
12 Management, and with the mediator to be agreed on by the  
13 employer and the company.

14 Mr. Carpenter, you didn't go to mediation  
15 or give notice you wanted to go to mediation before you  
16 filed this lawsuit; isn't that correct?

17 A. I took the advice of my attorney.

18 Q. You may have, but you didn't give notice and you  
19 didn't go to mediation before you filed this lawsuit,  
20 correct?

21 A. No, but I'd been to mediation twice.

22 Q. After you filed the lawsuit this Court ordered  
23 this case to mediation, right?

24 A. Yes.

25 Q. But you didn't follow the strict terms of this

1 contract that you read, understood, and whose terms you  
2 agreed to comply with, correct?

3 A. I agreed with my attorney, though.

4 Q. Yeah.

5 A. Counsel.

6 Q. You just felt like you didn't have to.

7 A. I agreed with legal counsel.

8 Q. And after mediation, after mediation, you're  
9 advised to go to the American Arbitration Association. But  
10 you didn't do that either before you filed your lawsuit,  
11 correct?

12 A. I believe that's correct.

13 Q. All right. Let's move on to something -- oh, and  
14 by the way, how many lawyers have you had in this case, sir?

15 A. Three.

16 Q. Rogge Dunn and his law firm?

17 A. Yes.

18 Q. Gardere Wynne and that big law firm?

19 A. Yes.

20 Q. And Ms. Gibson, David Wiley, and Brian Sanford?

21 A. Yes.

22 Q. The best lawyers you've had so far?

23 A. Absolutely.

24 Q. Thank you. No dispute about that, right?

25 A. No dispute.

1 Q. Okay.

2 Paragraph 12, you agreed no amendment or  
3 alteration of the terms of this agreement shall be valid  
4 unless made in writing and signed by both of the parties to  
5 this agreement. We don't have a dispute that this language  
6 requires a writing signed by both parties if you want to  
7 amend this agreement, correct?

8 A. If we want to amend this agreement but not the  
9 other agreement, not the oral agreement.

10 MR. L. FRIEDMAN: Object to everything  
11 after this agreement as being nonresponsive.

12 THE COURT: Try to limit your response to  
13 the question he's asking --

14 Q. (By Mr. L. Friedman) But your claim --

15 THE COURT: -- Mr. Cameron -- Carpenter.

16 Q. (By Mr. L. Friedman) -- is that your alleged oral  
17 agreement has nothing to do with this, correct?

18 A. Correct.

19 Q. Even though Paragraph 17 of this agreement that  
20 you read, understood, bargained for, negotiated and signed  
21 says on Paragraph 17 the entire agreement and binding  
22 effect. This agreement contains the entire agreement of the  
23 parties with respect to -- it doesn't say your employment.  
24 It says with respect to the subject matter hereof and shall  
25 be binding upon and inure to the benefit of the parties to

1 this agreement and their respective legal representatives.

2 The subject matter, that means everything  
3 in the agreement, correct?

4 A. As it relates to what's in writing there, yes.

5 Q. That means your employment. That means your  
6 compensation. That means your benefits.

7 A. But not to the three-percent sales proceeds bonus.

8 Q. That means bonus. That means the subject,  
9 everything. You'd agree with that?

10 A. I disagree with you.

11 Q. You disagree.

12 Okay, let's go on. And there's your  
13 signature, Mr. Potashnik's signature on behalf of Southwest  
14 Housing Management Company.

15 All right, next. So building a timeline, I  
16 have February 13th when the original agreement was --  
17 effective date of the original agreement to be signed and  
18 then October 13th, 2006, based on your testimony.

19 A. I'm -- pardon me. February 13th is what?

20 Q. My understanding is that was the effective date of  
21 your employment contract.

22 A. I signed it 2/25/04.

23 Q. Yes, but go back to the first paragraph, sir.

24 A. Understood. Okay.

25 MR. L. FRIEDMAN: Pull it up.

1 Q. (By Mr. L. Friedman) This is the agreement you  
2 bargained for. You made the effective date February 13th,  
3 2004 -- or made as of date. I'm sorry. But I'll put any  
4 date you want.

5 A. I said I agree with you.

6 Q. We can agree it was made as of?

7 A. I said I agree.

8 Q. Okay. Let's go -- let's go on.

9 We used your date for the alleged oral  
10 agreement, October 13th, 2006. I footnoted that's what you  
11 said, also, in your declaration which you filed in this  
12 case.

13 (Off the record)

14 (Sotto voce discussion held between defense  
15 attorneys and A/V technician)

16 MR. L. FRIEDMAN: Thanks.

17 Q. (By Mr. L. Friedman) Sorry for the delay.

18 Okay. Now going to your alleged oral  
19 agreement. Mr. Carpenter, have you ever testified under  
20 oath that the alleged oral agreement between you and  
21 Mr. Potashnik contained the following ingredients: Three  
22 percent of the net proceeds of the sale of the companies and  
23 the assets; everything listed in the purchase sale  
24 agreement -- and the company documents would be considered  
25 gross proceeds -- minus normal closing costs, minus

1 retention bonuses? Other employees to be identified later.  
2 That number would also be deducted before my number would be  
3 calculated. That would give the net proceeds number. I  
4 would receive three percent of that net proceeds number,  
5 gross minus normal closing costs, minus other key employees.

6 A. Yes.

7 Q. And that's different than what you told the jury  
8 your agreement was this morning. Okay, 'cause this morning  
9 you said it was three percent of sales proceeds on October  
10 13th. This was at your deposition.

11 At your deposition on January 18, 2018, you  
12 testified a little differently. Three percent of the net  
13 proceeds of the sale of the companies -- that's all the  
14 companies -- and the assets, everything in the purchase and  
15 sale agreement. And as of -- I'll submit to you that as of  
16 October 13, 2006, there was no purchasing sale agreement.  
17 You'll agree with that?

18 A. I agree.

19 Q. Minus normal closing costs. Undefined. It's  
20 never been defined, normal closing costs?

21 A. Just -- just what Brian mentioned.

22 Q. You didn't know what normal closing costs were on  
23 October 13th, 2006, correct?

24 A. I used all closing costs. So whether they're  
25 normal or low or high, I used all closing costs.

1 MR. L. FRIEDMAN: I'm going to object as  
2 being nonresponsive.

3 THE COURT: Okay. Sustained.

4 Q. (By Mr. L. Friedman) When you and Brian allegedly  
5 made this oral agreement on October 13, 2006, there was no  
6 way to know accurately what normal closing costs would be?

7 A. That's -- that's true. It was estimated.

8 Q. And there was no way to know what the sales  
9 proceeds would be, what the gross sales proceeds would be or  
10 what the net sales proceeds would be, correct?

11 A. Well, the gross we -- yes.

12 Q. There was no purchase and sales agreement.

13 A. We conceptually -- and we based it on the NOI.  
14 The NOI is the 36 million, plus a million. The PSA came in  
15 at 37 million.

16 Q. Wasn't my question. My question was, on October  
17 13th, 2006, there was not a signed LOI, letter of intent,  
18 and there was no purchase and sale agreement. So on October  
19 13th, 2006, there was no way for you and Brian Potashnik to  
20 know for sure what gross or net proceeds of a sale would be.  
21 Isn't that true, sir?

22 A. I would agree with that.

23 Q. Thank you.

24 A. Three --

25 Q. Let's go to your testimony --

1 A. Whether three percent --

2 Q. You've answered the question. Thank you.

3 So at your deposition two weeks ago you  
4 said retention bonuses, other employees would be identified.  
5 That number would also be deducted before my number. Here  
6 you were talking about corporate employees, your earlier  
7 testimony. And that would give the net proceeds number and  
8 I would receive three percent of that number, net proceeds  
9 number, gross minus normal closing costs, minus other key  
10 employees. And that was where you testified about the  
11 beginning date being October 13th, 2006, and the ending date  
12 being October 31, 2007.

13 Do you remember that?

14 A. I remember that.

15 Q. Okay. Let's move on.

16 Now, after that, in March of 2007, March  
17 14th, 2007, you sent -- you drafted -- don't -- I'm not  
18 looking at the script. This is just what you know.

19 A. Okay.

20 Q. On March 14th, 2007, you drafted an amended  
21 employment agreement and sent it to Brian Potashnik,  
22 correct?

23 A. At his request, yes.

24 Q. All right. And do you remember what that amended  
25 employment agreement contained?



1           A.    I know it contained the error -- an error of  
2 deducting the other employees. I don't remember all the  
3 other contents to it.

4           Q.    Okay. So let's look at it. Let's look at the  
5 whole agreement first.

6                        So you recognize document Defendants'  
7 Exhibit Number 13?

8           A.    Vaguely, yes.

9           Q.    And this was the first attempt by anybody to write  
10 down the oral agreement that you allege you made with  
11 Brian Potashnik on October 13th, 2007 [sic]?

12          A.    This is the first attempt that was requested for  
13 me to make an oral attempt at.

14          Q.    Yeah. I'm sorry. It's October 13th, 2006.

15                       But this was the first attempt by  
16 anybody -- and this was you -- made to write down your  
17 alleged oral agreement with Brian Potashnik made on October  
18 13, 2006, correct?

19          A.    I don't know. I can't speak for anybody else.

20          Q.    All right. This was your first attempt to write  
21 down the oral agreement you say you made with  
22 Brian Potashnik --

23          A.    That Brian Potashnik --

24          Q.    -- five months before?

25          A.    -- would be, yes. Yes.

1 Q. So you call it -- you know, don't say writing down  
2 oral agreement. You don't say new agreement, correct?

3 A. Correct.

4 Q. You say amendment to employment agreement. That's  
5 what you called it five months after this alleged oral  
6 agreement. And you start out, This amendment to employment  
7 agreement is executed as of the date below, recited by and  
8 between Jeffrey W. Carpenter --

9 Same as the employee in the employment  
10 agreement, correct?

11 A. Yes.

12 Q. -- on the one hand and Southwest Housing --  
13 oops -- Development Company.

14 That wasn't part of the oral agreement,  
15 correct?

16 A. No. As I mentioned --

17 Q. I'm going to take everything after no as being  
18 nonresponsive.

19 Then Southwest Housing Management Company,  
20 that was the company defined in the employment agreement,  
21 correct?

22 A. Yes.

23 Q. And that was your --

24 A. Wait.

25 Q. -- employer --

1           A.    Pardon me.  Would you mind repeating that  
2 question?

3           Q.    Sure.  Southwest Management -- excuse me --  
4 Southwest Housing Management Company was defined as the  
5 company in your written employment agreement?

6           A.    Yes.

7           Q.    And it was your employer as set forth in your  
8 written employment agreement?

9           A.    Yes.

10          Q.    And the next party of this amendment to employment  
11 agreement is Affordable Housing Construction, Inc.  And that  
12 wasn't a party to your employment agreement, correct?

13          A.    As I mentioned, I made a mistake in tying it into  
14 the employment agreement for the three percent.

15          Q.    Okay.  So you made a mistake tying it into the  
16 employment agreement.  You made a mistake by adding new  
17 parties to this agreement.

18          A.    The three -- the three percent was based on all  
19 the companies being sold, plus the assets.

20          Q.    Well, it's interesting, because you didn't mention  
21 that when you made a hug deal, bump deal with  
22 Brian Potashnik on October 13th that you made it with  
23 Affordable Housing Construction and Southwest Development  
24 Company as well.  Did you leave that out?

25          A.    He informed me --

1 Q. Did you leave that out --

2 A. -- that he was selling --

3 Q. -- is my question.

4 A. He informed me that he was selling all the  
5 entities.

6 Q. He may have, but did you leave out the part where  
7 Brian Potashnik said I am authorized to represent Southwest  
8 Housing Management Company, Affordable Housing Corporation,  
9 Cheryl Potashnik, Southwest Management Company, and every  
10 single partnership, all 55 partnerships that are included in  
11 our family of companies and I'm going to bind them in making  
12 this oral agreement? Did you leave that out?

13 A. Yes, I would say I left that out --

14 Q. And you're telling --

15 A. -- expecting it --

16 Q. And you're telling --

17 A. -- to come from the other side.

18 Q. And you're telling this jury that that's what  
19 Brian Potashnik said to you on October 13th, 2006?

20 A. He told me he was selling all the companies and  
21 all the property assets.

22 Q. Right. But he never said to you that he was  
23 authorized and representing Cheryl Potashnik, Affordable  
24 Housing Construction, Southwest Housing Development Company,  
25 and all of the partnerships that actually owned all the

1 assets that Southwest Housing Management managed. Isn't  
2 that true?

3 A. He didn't say that. However --

4 Q. Thank you. I'm going to take he didn't say that  
5 as the response and anything after --

6 A. However, that --

7 Q. -- that as nonresponsive. That's the only  
8 question I asked you, sir.

9 MR. L. FRIEDMAN: Let's move to the next  
10 one. No, the next paragraph. I wasn't -- I wasn't clear,  
11 Mr. Page. I'm sorry. That's what happens when I get  
12 excited. No, you missed a paragraph.

13 Q. (By Mr. L. Friedman) Then you say in the agreement  
14 you wrote, Whereas, employee and employer entered into that  
15 certain employment agreement dated February 13th, 2004;  
16 signed February 25th, 2004, with employment date beginning  
17 March 15th, 2004. And you defined the employment agreement  
18 that you just testified to you made a mistake by including  
19 in the title you make that employment agreement a part of  
20 this agreement. Isn't that true, sir?

21 A. I told you I made a mistake in doing this draft.

22 Q. Well --

23 A. As it is just a draft.

24 Q. Now you made three mistakes. You included it in  
25 the title, you added additional parties, and you

1 incorporated the employment agreement into the body of the  
2 agreement, correct?

3 A. Yes, and it was never accepted.

4 MR. L. FRIEDMAN: Okay. I'm going to take  
5 everything after yes as being nonresponsive, Your Honor.

6 THE COURT: Okay. Objection's sustained.

7 Q. (By Mr. L. Friedman) Then we go to the second  
8 whereas. Whereas, employee and employer entities desire for  
9 employee to remain employed by the employer until the  
10 employer entities, affiliates, successors or assigns sell to  
11 (or merger with or similar transaction) Cascade Affordable  
12 Housing and/or its affiliates (Cascade).

13 So five months after you made this alleged  
14 oral agreement with Brian Potashnik you believed that your  
15 agreement required you to remain employed by employer until  
16 the employer entities sells to Cascade. That was the deal  
17 you thought you made, stay employed until the seller sold to  
18 Cascade?

19 A. Yes, with --

20 Q. Correct?

21 A. Yes, with the --

22 Q. Thank you.

23 A. -- proper time frame.

24 MR. L. FRIEDMAN: I take everything after  
25 yes as being nonresponsive.

1 THE COURT: Sustained.

2 Limit your response to his questions,

3 Mr. Carpenter.

4 Q. (By Mr. L. Friedman) But then it goes on. It says  
5 the employer entities' interests in the partnership projects  
6 and/or assets to be sold, as defined in the letter of intent  
7 dated October 16th, 2006, or the sale of employer entities,  
8 affiliates -- or the sale of employer entities, affiliates,  
9 successors or assigns, plus any furniture, fixtures, and  
10 equipment owned by employer. That's an add-on, correct?  
11 That's new.

12 Plus any furniture, fixtures, and equipment  
13 owned by employer. That's a new term, correct?

14 A. He said he's selling everything, so...

15 Q. But you just added that to be sure, right? It  
16 wasn't on the board this morning, right?

17 A. No, I did not break it out --

18 Q. Okay.

19 A. -- on the board this morning.

20 Q. So that's a new term.

21 It says -- then it says, Or the sale to,  
22 merger or similar transaction with any other company or any  
23 individual other than Cascade by employer. That means that  
24 not only did you want everybody to pay you upon a sale with  
25 Cascade, but in addition you wanted to be paid on the sale

1 to, merger or similar transaction with any other company in  
2 the world. If the Cascade deal didn't go through and the  
3 sale was to any other company in the world, you still wanted  
4 to get paid. Now surely you'll agree that's a new term?

5 A. If Cascade didn't close and another company was  
6 selected, I wanted the same terms.

7 Q. Okay. Forever.

8 A. As agreed upon.

9 Q. Forever.

10 A. As agreed upon.

11 Q. No, forever. There's no limit to that clause,  
12 correct? It doesn't end in a year, doesn't expire on its  
13 own terms. That's forever. And no matter how big Southwest  
14 companies get, correct? That's what it says, right?

15 A. That's what it says.

16 Q. Thank you.

17 And that wasn't agreed to on October 13,  
18 2006. That's a new term.

19 A. The company details were not presented --

20 Q. I can't hear you. I just can't hear you.

21 A. I said the company details were not presented to  
22 me, so --

23 Q. Well, that's a new term.

24 A. -- you're correct.

25 Q. Thank you.



1 MR. L. FRIEDMAN: Let's go to the next one.

2 Q. (By Mr. L. Friedman) Paragraph 2 of your  
3 employment agreement you say, In addition to his consistent  
4 compensation under the agreement -- which you've defined as  
5 your employment agreement -- employee will be paid on the  
6 closing date of the sale (and as recorded/identified in any  
7 purchase, sale, merger or similar type of agreement and  
8 recorded at the title company for the sale) from the  
9 employer entities -- again, encompassing a whole bunch of  
10 companies -- a compensation in the amount of three percent  
11 minimum.

12 Now it's three percent minimum. Didn't say  
13 three percent minimum this morning. Did you leave that out?

14 A. Three percent is three percent.

15 Q. But it's not three percent minimum. Three percent  
16 minimum means that you could get more.

17 A. Well, initially, I bargained for more and lost  
18 that --

19 Q. Sir --

20 A. -- argument.

21 Q. -- you didn't have an agreement for a minimum of  
22 three percent. Your alleged agreement was three percent.  
23 So this document you were trying to get Brian Potashnik or  
24 whoever to sign certainly wasn't accurate and certainly had  
25 additional and different terms, correct?

1           A.   Wasn't trying to get them to sign. I was just  
2 trying to move the process along.

3           Q.   Okay, you call it move the process along, but I  
4 call it it has additional and different terms. Do you agree  
5 with that?

6           A.   I'll acquiesce to it.

7           Q.   Thank you. I'll take that as agreement.

8                         Three percent of the compensation played --  
9 paid to the employer entities. Now I have without deduction  
10 for any compensation paid to any other employees of any of  
11 the employment [sic] entities. So --

12          A.   Absolute error.

13          Q.   -- here I've got minus closing costs and minus  
14 severance bonuses, minus severance bonuses you testified to  
15 under oath. And here you testified to under oath this  
16 morning and at your deposition two weeks ago. And here,  
17 five months after the alleged oral agreement, your alleged  
18 agreement is without deduction for any compensation paid to  
19 any other employees of any of the employer entities.  
20 Meaning every Southwest entity, including the partnerships  
21 or affiliated entity. You're talking about 50 or 60  
22 different entities, correct?

23          A.   There was 55 --

24          Q.   Pardon me?

25          A.   -- yeah.

1 Q. Pardon me?

2 A. Yes.

3 Q. Okay.

4 And compensation provided in this paragraph  
5 shall be paid to employee whether or not he remains an  
6 employee of employer through the date of the sale. So I'm  
7 assuming by that time you knew that you were not going to be  
8 employed through the date of the sale and that's why you put  
9 that in there, correct?

10 A. Yes.

11 Q. Okay. That was a yes?

12 A. Yes.

13 Q. All right. So that's a new term.

14 A. And that's --

15 Q. That's a new term.

16 A. -- the big error that I admitted to.

17 Q. Say that again.

18 A. I said, And that's the big error that I admitted  
19 to.

20 Q. Okay. So that's a new term. Whether or not you  
21 remain an employee of employer through the date of the sale,  
22 that's a new term. You didn't testify to that this morning,  
23 correct?

24 (No verbal response)

25 Mr. Carpenter, some of these questions are

1 easy. You didn't testify to that this morning?

2 (Witness is reading the screen)

3 A. In reality, the sale took place much after.

4 Q. Sir, that wasn't my question. My question was,  
5 when I asked you what the ingredients were for your alleged  
6 oral agreement, you didn't tell me about that this morning.  
7 You didn't tell the jury about that this morning, correct?

8 A. Uh-huh. Very simple. I'm keeping it simplified,  
9 yes.

10 Q. Okay. You didn't testify to it when you had all  
11 the time in the world at your deposition on January 18th,  
12 2018, correct?

13 A. Correct.

14 MS. GIBSON: Jeff, will you pull your mike  
15 in toward you so we can hear you better, please?

16 (Witness complied)

17 A. Correct.

18 MS. GIBSON: Thanks.

19 THE WITNESS: Sorry.

20 MR. L. FRIEDMAN: Let's move on.

21 Q. (By Mr. L. Friedman) Then on the amendment to  
22 employment contract that you drafted, Additionally, the  
23 employer entitles -- I'm sorry -- Additionally, the employer  
24 entities also acknowledge that employee is to be paid  
25 compensation for unpaid and past-due earnings of income

1 compensation (including wages and bonuses) in the amount of  
2 \$600,000.

3 Now, this morning you testified there was  
4 no agreement regarding earned bonuses on October 13th, 2006.  
5 Did you make a different agreement with Mr. Potashnik  
6 between October 13th, 2006, and March '07 when you wrote  
7 this amendment supposedly to reflect your oral agreement?  
8 It's a yes-or-no question.

9 A. Yes.

10 Q. Okay. You're claiming there were two oral  
11 agreements now; is that right?

12 A. I'm sorry. You confused me.

13 Q. All right. Maybe I confused myself.

14 This morning when I asked you about unpaid  
15 bonuses under your employment contract, you said there was  
16 no agreement regarding unpaid bonuses on October 13th, 2006.  
17 Do you remember that testimony?

18 A. Yes.

19 Q. I wrote it down.

20 Now, five months later, on March 14th,  
21 2007, you add a term that says you're claiming 600,000 from  
22 the period of March 15th, 2004, through March 14th, 2007.  
23 That's a new term that wasn't included in the alleged oral  
24 agreement you made with Brian Potashnik on October 13th,  
25 2006, correct?

1           A.     That is the information that I submitted on March  
2     14, 2007, to be reviewed and discussed. So I had that  
3     attachment, so that's the number that I used for discussion  
4     purposes.

5                     MR. L. FRIEDMAN: I'm going to object to  
6     that as being nonresponsive.

7                     THE COURT: Try and limit your response  
8     just to the question he's asking.

9           Q.     (By Mr. L. Friedman) Here's my question. That's a  
10    new term, correct?

11          A.     Which is a new term?

12          Q.     You're asking for \$600,000 bonus, but that was  
13    never agreed to by Mr. Potashnik, correct?

14          A.     Not at the time.

15          Q.     Okay. At the time you asked for the \$600,000 in  
16    bonus. According to the Paragraph 4b of your employment  
17    contract, that was not agreed to by Mr. Potashnik, correct?

18          A.     Not at that time.

19          Q.     And, in fact, you're asking for it for the period  
20    of March 15th, 2004, through March 14th, 2007. But at that  
21    point you already knew you had received your \$50,000 bonus  
22    for the year 2004 to 2005. Isn't that true, sir?

23          A.     Yes, it is.

24          Q.     So you were double dipping, correct?

25          A.     I don't recall so. So it's an error.

1 Q. It's another error?

2 A. If so.

3 Q. Okay, chocked full of errors.

4 A. Again, a draft.

5 Q. Okay, it's a draft of errors.

6 This amount is to be paid as follows:

7 150,000 to be paid by March 31st, 2007. That was

8 three-and-a-half weeks later, correct?

9 A. Yes.

10 Q. As a sign of good faith as employee's immediate  
11 financial need is urgent and the remaining 450 -- 450,000 to  
12 be paid at the closing of the sale (and as  
13 recorded/identified in the purchase, sale, merger or similar  
14 type agreement and recorded at the title company for the  
15 sale).

16 That wasn't agreed to by Mr. Potashnik.  
17 That's a new term.

18 A. There's no official guideline. I put that in  
19 there, yes.

20 Q. Yeah.

21 In the event that the sale from the  
22 employer entities to Cascade does not happen, the balance  
23 due to employee would be paid out within 30 days of the  
24 cancellation of any transaction agreement, written or  
25 verbal, with Cascade. The compensation provided in this

1 paragraph shall be paid to employee whether or not he  
2 remains an employee of employer through the date of the  
3 sale.

4 So all of that is something new and  
5 different that you shoved in there that was not agreed to on  
6 October 13th, 2006, correct?

7 A. It was a suggestion, yes.

8 Q. Yeah, suggestion.

9 So you weren't only trying to write down  
10 this alleged oral agreement, you were now negotiating with  
11 Mr. Potashnik for a different deal, correct?

12 A. Not for a different deal. Just trying to con --  
13 clear up and confirm our deal --

14 Q. Well --

15 A. -- more clearly.

16 Q. -- you didn't have a deal for the 600,000,  
17 correct? You said that already.

18 A. Yeah.

19 Q. And you didn't have the deal --

20 A. Nor did I not have it either.

21 Q. Well, you weren't 10 feet tall that day, were you?

22 A. No.

23 Q. And you're not going to be, right?

24 A. But I wasn't told no either.

25 Q. Okay, well, you might be.



1                   You never got this agreement signed, back  
2 signed, did you?

3           A.    No, sir.

4           Q.    You never got a counter proposal, did you?

5           A.    No, sir.

6           Q.    All right. The employer entities, jointly and  
7 severally, hereby irrevocably and unconditionally guarantee  
8 the payment to employee of the sums provided in numbered  
9 Paragraph 2 hereof.

10                   So you wanted Mr. Potashnik,  
11 Cheryl Potashnik, and the other Southwest entities to  
12 guarantee you \$600,000; a hundred fifty thousand to be paid  
13 three-and-a-half weeks later, unconditionally, irrevocably,  
14 whether or not you remained an employee through the date of  
15 the sale. That's what you're asking for?

16          A.    Yes.

17          Q.    And even including a bonus for the year that you'd  
18 already been bonused, correct?

19          A.    Yes.

20          Q.    And you'll agree with me none of this is reflected  
21 in the alleged oral agreement that you made with  
22 Mr. Potashnik? You have to say it.

23          A.    Correct.

24          Q.    Thank you.

25                   MR. L. FRIEDMAN: Go to the next one.

1 THE COURT: You've got about two minutes  
2 before the next afternoon break.

3 MR. L. FRIEDMAN: We can take a break.

4 THE COURT: We'll take our next 10-minute  
5 break, ladies and gentlemen, our first 10-minute break of  
6 the afternoon.

7 (The jury exited the courtroom.)

8 (Recess taken)

9 (The jury entered the courtroom.)

10 THE COURT: Welcome back. Good afternoon,  
11 ladies and gentlemen.

12 We'll continue with Mr. Carpenter's  
13 testimony. The attorney asking questions is Mr. Friedman.  
14 We'll ask him to pick up where he left off.

15 Q. (By Mr. L. Friedman) Mr. Carpenter?

16 A. Yes.

17 Q. Have you ever testified under oath that you made  
18 this oral deal with Brian Potashnik on May 6th, 2006?

19 A. I may have messed up the date and said May 6. It  
20 was the initial -- I may have used the wrong date.

21 Q. Well --

22 A. I'm not sure.

23 Q. -- Let me ask you a better question. When I took  
24 your deposition on March 16, 2010, did you testify that you  
25 made your alleged oral deal with Brian Potashnik on March

1 16th, 2010?

2 THE COURT: I think you messed up the  
3 dates, though.

4 MR. L. FRIEDMAN: I'm sorry.

5 Q. (By Mr. L. Friedman) When I took your deposition  
6 on March 16th, 2010, did you testify that you made your  
7 alleged deal with Brian Potashnik on May 6th, 2006?

8 A. I may have. I don't recall.

9 Q. And at that time, sir, did you testify under oath  
10 that the deal was based on a \$30 million -- \$37 million  
11 gross sales price?

12 A. As I mentioned --

13 Q. It's yes or no.

14 A. Yes, 37 million.

15 MR. L. FRIEDMAN: Let me play the  
16 deposition, Your Honor.

17 THE COURT: Okay.

18 MR. L. FRIEDMAN: It's the first  
19 deposition. Page 52, Lines 10 -- I'm sorry.

20 MS. GIBSON: He said yes. He said yes.

21 MR. L. FRIEDMAN: He said he doesn't  
22 remember testifying that on March 16th, 2010 --

23 MS. GIBSON: Oh, that one.

24 THE COURT: That's all right. Go ahead.

25 MS. GIBSON: That's okay.

1 MR. L. FRIEDMAN: Page 251, Line 10, to  
2 252, Line 19.

3 (Video playing)

4 Q. "Mr. Carpenter, when did you reach an agreement  
5 with Mr. Potashnik and starting at three percent  
6 compensation on the so-called sale of the general  
7 partnership properties?"

8 A. "It was in the time frame of May -- I believe May  
9 of '06 at lunch at Cafe de Brazil, I believe."

10 Q. "And can you describe what was said?"

11 A. "Well, it was following up. We have several  
12 different offers. Discussed what we want to do. The key  
13 ingredient in promoting this, you know, development  
14 construction. You know, they're pretty much done."

15 "You're going to be the face of the  
16 company. You'll be meeting with -- doing the property  
17 tours. You'll be doing, you know, actually, due diligence  
18 in selling of the company and so forth. And you're --  
19 you're a key proponent of why we're in the position to sell  
20 the company, and with that we'd like to compensate you three  
21 percent of the sales price. And there was a stipulation  
22 with that, and that was less normal closing costs; which I  
23 estimated was close to, basically, a million dollars 'cause  
24 I think at the time we said the offer was 37 million."

25 Q. "What was your response?"

1           A.    "I was -- I was pleased with that knowing that we  
2 still had unresolved issues with the -- you know, for my  
3 agreement. But would I liked to have had more. I know I  
4 contributed a great deal but I was -- I was comfortable with  
5 it."

6           Q.    "Did you accept his offer?"

7           A.    "Yes, I did."

8                       (Video ended)

9           Q.    (By Mr. L. Friedman) Mr. Carpenter, do you  
10 remember that testimony?

11          A.    Vaguely and do now.

12          Q.    And do you remember that it was your lawyer,  
13 Doug Haloftis, that did the examination, not me?

14          A.    I really don't recall.

15          Q.    Your lawyer was asking those questions, not me.  
16 And in response you said three percent compensation on the  
17 so-called sale of the general partnership, the general  
18 partnership. You said lunch at -- during lunch at Cafe de  
19 Brazil. Three percent compensation of the sales price, less  
20 normal closing costs.

21                       At the time you estimated it at \$1 million  
22 and you said nothing about adding or subtracting employee  
23 bonuses. Remember that?

24          A.    I made that mistake, yes.

25          Q.    Another mistake.

1 A. I made that mistake, yes.

2 Q. And, Mr. Carpenter, this October 13th, 2006  
3 meeting happened at a different cafe, didn't it?

4 A. Yes. It was Cafe Express.

5 Q. Okay. So this one was Cafe Express.

6 A. Got the restaurants wrong.

7 Q. And March 16, alleged oral agreement, Cafe de  
8 Brazil, no mention of employee severance, 37 million. It's  
9 a little different than what you testified to this morning,  
10 isn't it, Mr. Carpenter?

11 A. A little bit.

12 Q. And you said this was mistake. Cafe de Brazil  
13 alleged oral agreement was a mistake?

14 A. Yes. It was Cafe Express.

15 Q. And when you gave your deposition in 2010 that was  
16 actually three-and-a-half years after you were terminated by  
17 Southwest Housing Management, correct?

18 A. Yes.

19 Q. And it was eight years ago?

20 A. Yes.

21 Q. So you would think that your memory would have  
22 been better about these events eight years ago than it is  
23 today?

24 A. My homework is a lot better today than it was back  
25 then.

1 Q. Wasn't my question. My question is you would  
2 think that your memory of this great event was better  
3 three-and-a-half years after the so-called alleged agreement  
4 with Mr. Potashnik than it would be today.

5 A. You could assume that.

6 Q. Isn't it true, sir?

7 A. Yes.

8 Q. Okay.

9 So then the next event comes when you send  
10 an Email on November 15, 2007.

11 MR. L. FRIEDMAN: No, let's see the whole  
12 Email, please.

13 Q. (By Mr. L. Friedman) And this is an Email you  
14 send --

15 MR. L. FRIEDMAN: Let's do the two and  
16 the -- yeah.

17 Q. (By Mr. L. Friedman) -- from Jeffrey Carpenter.  
18 And that's your Email address, correct?

19 A. Yes.

20 Q. And dated Thursday, November 15th, 2007, at  
21 7:37 a.m., to Cheryl Potashnik and Brian Potashnik of  
22 southwesthousing.com, correct?

23 A. Yes.

24 Q. Okay. So --

25 MR. L. FRIEDMAN: What exhibit is this,

1       Mi ke?

2                       MR. DONOHUE:   24.

3                       MR. L. FRIEDMAN:   Defendants' Exhi bi t 24.

4       Do we need to have this admi tted?

5                       MR. DONOHUE:   Same i f gi ven to the jury.

6       Yes.

7                       MR. L. FRIEDMAN:   Your Honor, I'd move for  
8       admi ssi on of Defendants' 3 and 24.

9                       THE COURT:   Any obj ecti on?

10                      MS. GIBSON:   What are they?

11                      MR. L. FRIEDMAN:   Thi s i s 24.

12                      Brian says i t' s 13.

13                      MR. DONOHUE:   I'm sorry, Your Honor.   It's  
14       13.

15                      MR. L. FRIEDMAN:   Bri an' s ri ght.

16                      MS. GIBSON:   No, not to 24.

17                      THE COURT:   Twenty-four i s admi tted.

18                      MR. L. FRIEDMAN:   That' s your copy.

19                      MS. GIBSON:   Okay.   Thanks.

20                      MR. L. FRIEDMAN:   Thi rteen i s the amendment  
21       to emp loyment agreement.

22                      MS. GIBSON:   Yeah, that' s fi ne.   No  
23       obj ecti on.

24                      THE COURT:   Thi rteen i s admi tted.

25                      Q.    (By Mr. L. Friedman) So you send thi s Email --



1 A. Pardon me. Pardon me.

2 Q. I'm sorry.

3 A. Pardon me. Do you have an extra copy, by any  
4 chance?

5 MR. L. FRIEDMAN: Yeah?

6 MR. DONOHUE: Yes.

7 MR. L. FRIEDMAN: May I approach,  
8 Your Honor?

9 THE COURT: Certainly.

10 Q. (By Mr. L. Friedman) I'm handing you Defendants'  
11 Exhibit 13 -- I'm sorry -- 13 and 24.

12 A. I'll try to look a little closer.

13 Q. That's all right.

14 We're on this Email, November 15th, 2007.

15 A. Okay.

16 Q. And --

17 MR. L. FRIEDMAN: Can I see the whole thing  
18 first?

19 Q. (By Mr. L. Friedman) Okay. And then we're going  
20 to go in the middle of the first full paragraph.

21 MR. L. FRIEDMAN: Well, let me see the  
22 first paragraph. Can you do the whole first paragraph?  
23 Yeah, perfect. Let's do it a little higher, if you don't  
24 mind. Yeah, perfect.

25 Q. (By Mr. L. Friedman) So first full paragraph

1 starting, one, two, three, four, five, six, seven, eight,  
2 nine lines from the top, sentence on the right-hand side you  
3 write "last year". You follow me?

4 A. Yes, sir.

5 Q. So you write, "Last year, after the Cascade  
6 transaction was announced and it became reasonably clear  
7 that I would not be retained after closing of that  
8 transaction, you implored me to stay with the company  
9 through that time," -- through the closing, right? You have  
10 to answer verbally.

11 A. The closing as we knew it at that time, yes.

12 Q. All right.

13 -- "as that continuity and my continued  
14 services were essential to the success of that transaction."  
15 this was your writing, right?

16 A. Yes.

17 Q. In exchange, you informed me that I would be  
18 entitled to receive at three percent of the proceeds of the  
19 transaction, net certain costs, which based on the structure  
20 at that time would represent an amount in excess of  
21 \$1 million. This is in addition to the unpaid annual  
22 bonuses.

23 So this explanation is a little different  
24 than your other explanations of this three-percent proposed  
25 bonus, correct?

1 A. Yes.

2 Q. And in this Email your understanding of your deal,  
3 alleged deal with Mr. Potashnik, was that you would have to  
4 stay through the closing. 'Cause it says in exchange for  
5 staying through the closing you would get three percent of  
6 the proceeds, et cetera. That was your understanding when  
7 you wrote this Email, correct?

8 A. Yes. Poor language --

9 Q. Okay.

10 A. -- but yes.

11 Q. Yes, poor language. Thank you.

12 So let's go and see what you have attached  
13 to this Email. So attached to this Email you prepared a  
14 document called separation agreement. Am I right?

15 A. Yes.

16 Q. Okay. This is another document you prepared on  
17 November -- or -- and sent to the Potashniks November 15th,  
18 2007. It's a week after you were terminated, correct?

19 A. Two weeks.

20 Q. All right. Two weeks after you were terminated.  
21 Approximately, two weeks. And, certainly, if you had an  
22 oral agreement with Mr. Potashnik you'd know what that oral  
23 agreement was two weeks after the agreement, correct?

24 A. Yes.

25 Q. Okay.

1                   So in this separation agreement that you  
2                   prepare it says the separation agreement -- and you define  
3                   that as agreement -- is entered into by and between  
4                   Southwest Housing Management, Affordable Housing  
5                   Construction, and Southwest Housing Development, their  
6                   affiliates, subsidiaries, parents, partners, assigns and  
7                   related entities which are collectively referred to herein  
8                   as the company. These are new entities again that you're  
9                   now defining as the company, correct?

10                  A.     Yes.

11                  Q.     And Brian Potashnik and Cheryl Potashnik (together  
12                          referred to herein as the Potashniks), on the one hand, and  
13                          then Jeff Carpenter, who is you, would be the employee,  
14                          correct?

15                  A.     Yes.

16                  Q.     Let me just take an aside. You have testified  
17                          previously under oath that you never made an agreement with  
18                          Cheryl Potashnik, correct?

19                  A.     I don't recall if I did or did not, quite  
20                          honestly.

21                  Q.     You've testified under oath that Cheryl Potashnik  
22                          never agreed to anything, bonus, salary, severance, anything  
23                          with you. Didn't you?

24                  A.     I do not recall that.

25                  Q.     Okay. Well, let's take a minute.

1 MR. L. FRIEDMAN: Can you find that?

2 A. Perhaps so.

3 Q. (By Mr. L. Friedman) All right. Let's come  
4 back -- I have that, but let's come back to that.

5 MR. L. FRIEDMAN: If you wouldn't mind,  
6 Mr. Page, finding that.

7 Q. (By Mr. L. Friedman) Okay. So now we have who  
8 you're proposing the parties to this agreement would be.  
9 Let's go to the next -- go down to Paragraph 4. Now you say  
10 the company and the Potashniks acknowledge that employee has  
11 earned and is owed unpaid annual wages and bonuses in the  
12 amount of \$600,000.

13 Did I read that correctly?

14 A. Yes.

15 Q. You didn't mean wages, 'cause you'd been paid all  
16 your wages, correct?

17 A. Correct.

18 Q. And bonuses, we established already you've been  
19 paid the 2004/2005 bonus, correct?

20 A. Yes.

21 Q. And there was -- there's been no agreement as to  
22 any bonuses under the employment contract, correct?

23 A. Only my suggestions.

24 Q. Yeah. And as you said, there's been no agreement  
25 as to any bonuses under the employee contract. You say you

1 have a separate, second, oral agreement with Brian Potashnik  
2 as to bonuses, correct?

3 A. Yes.

4 Q. What's the date of that agreement?

5 A. I don't -- I don't know the exact date. It was  
6 after March 14th of '07. I don't recall off the top of my  
7 head.

8 Q. Let's come back to that.

9 I'm going to put down no wage claim, no  
10 claim for bonus under employment contract, separate oral  
11 agreement with -- I'll put down BP for Brian Potashnik. You  
12 know that's Brian Potashnik. Okay, 3:00 o'clock today,  
13 separate oral agreement. So we'll come back to that.

14 So on November 15, 2007, couple, two, three  
15 weeks after you were terminated, you say the company and the  
16 Potashniks acknowledge that employee has earned and is now  
17 owed unpaid annual wages and bonuses in the amount of  
18 \$600,000.

19 We've now established that you're not owed  
20 any wages, correct?

21 A. Correct.

22 Q. This amount shall be paid to employee, less  
23 applicable withholdings, according to the following  
24 schedule: 300,000 shall be paid to employee upon the  
25 earliest of the first closing of any of the Potashniks'

1 companies' interests in any project partnerships as outlined  
2 in the PSA with Cascade Affordable Housing, LLC, and/or its  
3 affiliates; the sale of any land held by the company,  
4 including but not limited to the Las Vegas owned community;  
5 or December 15, 2007; and 300,000 shall be paid to employee  
6 on the earlier to occur of the second closing as outlined in  
7 the PSA --

8 PSA is purchase and sales agreement, right?

9 A. Yes, sir.

10 Q. -- with Cascade Affordable Housing, LLC, and/or  
11 its affiliates or any successor in interest thereto; and  
12 February 15, 2008.

13 Now, none of that was agreed to. All of  
14 these are new terms or different terms, correct?

15 A. Yes, different from --

16 Q. The alleged oral agreement?

17 A. Or "the oral agreement", yes.

18 Q. Okay.

19 Then you go on to say, Provided, however,  
20 that the event of the closing of the sale or transfer of the  
21 company or any other transaction that results in the sale or  
22 transfer of all or a majority of the company's assets, a  
23 merger of the company with another entity, or otherwise  
24 results in a change in control or transfer of majority  
25 ownership of the company, which shall include but expressly

1 is not limited to the second closing of the PSA with Cascade  
2 Affordable Housing, LLC, within one year of the date of this  
3 agreement -- you define it as transaction -- then all unpaid  
4 portions of the amount provided in this paragraph shall  
5 become immediately due and payable within seven days of the  
6 closing of such instruction.

7 All of this is new or different from your  
8 last oral agreement with Brian Potashnik, correct?

9 A. Yes.

10 Q. Okay.

11 Let's go to the next paragraph. Now,  
12 again, November 15th, couple, three weeks after -- two,  
13 three weeks after your termination in 2007.

14 In addition to the foregoing amounts,  
15 employee will be paid within seven days of the date of  
16 closing of any transaction defined above an amount in cash  
17 equal to three percent of the gross compensation or  
18 consideration, whether in the form of cash, stock,  
19 assumption of debt, fees, loans or otherwise, for the  
20 purchase of the company --

21 That's all new, isn't it?

22 A. Yes, it's --

23 Q. Okay.

24 A. -- new language.

25 Q. All right.



1                   -- less reasonable costs of closing. In  
2 the event that a transaction is effected that results in a  
3 sale or transfer of less than 100 percent of the company  
4 outstanding stock or assets, then the gross compensation  
5 amount for purposes of this paragraph shall be calculated as  
6 if a transfer of a hundred percent of the company being  
7 made.

8                   Did I read that properly?

9           A. I don't know. I lost that last part.

10          Q. In the event that a transaction is effected that  
11 results in a sale or transfer of less than a hundred percent  
12 of the company's outstanding stock or assets, then the gross  
13 compensation amount for purposes of this paragraph shall be  
14 calculated as if a transfer of a hundred percent of the  
15 company will be made.

16                  You wrote that?

17          A. Yes.

18          Q. Sent it to the Potashniks. They never agree to  
19 it, correct?

20          A. At their request for another draft opinion, yes.

21                  MR. L. FRIEDMAN: That wasn't my question.  
22 I object as being nonresponsive.

23                  THE COURT: Sustained. The question is did  
24 they agree to it.

25          Q. (By Mr. L. Friedman) The Potashniks never agreed

1 to it, correct?

2 A. Correct.

3 Q. And these weren't -- these terms in Paragraph 5  
4 were not contained in your alleged agreement with  
5 Brian Potashnik, correct?

6 A. No.

7 Q. All right.

8 Mr. Carpenter, you made no agreement with  
9 Brian Potashnik about the sale or transfer of anything less  
10 than a hundred percent of the stock or assets of the gross  
11 compensation amount for the purposes of the sale of the  
12 company; isn't that correct? These were just added terms.

13 A. Added terms.

14 Q. Okay.

15 A. Playing lawyer.

16 Q. You're playing lawyer. You took the time and  
17 thought to put into this agreement, correct? You had to.

18 A. Google information, yes.

19 Q. Yeah, but you didn't -- you didn't get these terms  
20 from Google information. You didn't get these terms from  
21 Google information. These are terms that you thought about,  
22 wrote down, made a couple of drafts, and then sent it to the  
23 Potashniks, correct?

24 A. I did some research, yes.

25 Q. Okay. But one thing you didn't put in here was

1 any mention of severance bonuses paid to the employees,  
2 correct?

3 A. I admitted that the draft is incorrect.

4 Q. The severance agreement that you drafted is not  
5 correct either?

6 A. I made that same mistake throughout.

7 Q. Okay. Severance agreement not correct; the  
8 employment agreement not correct, correct?

9 A. Yes.

10 Q. November 15th Email not correct, right?

11 A. Well, I didn't read the whole thing but --

12 Q. Your formula is not correct.

13 MS. GIBSON: And where are you, Larry?

14 MR. L. FRIEDMAN: In the middle of the  
15 page.

16 MS. GIBSON: No, what --

17 THE COURT: We're talking.

18 MS. GIBSON: The top? Okay.

19 MR. L. FRIEDMAN: After the November 15th  
20 Email, middle of the page.

21 MS. GIBSON: Okay. Okay. Twenty-four?

22 MR. L. FRIEDMAN: Right.

23 Q. (By Mr. L. Friedman) Your expression of your  
24 three-percent deal is correct or not?

25 A. I'm misquoting my own information here. This --

1 approximately a million dollars, this is in addition to  
2 unpaid annual bonuses. So I was including the annual  
3 bonuses to be deducted to get to the million. It may not be  
4 worded properly but that's the contents.

5 Q. A million dollars off of a \$37 million gross?

6 A. Yes.

7 Q. So is that correct or different?

8 A. That's correct.

9 Q. And is that the same as your testimony this  
10 morning?

11 A. I believe so.

12 Q. All right.

13 Okay. Let's move on. So this part about  
14 the gross compensation amount for purposes of this paragraph  
15 shall not include [sic] and shall specifically include any  
16 amounts paid or for the benefit of the Potashniks, the  
17 company, and/or its stockholders in the form of fees,  
18 bonuses, severance payments, loans or otherwise, correct?

19 A. Correct.

20 Q. And let me go back to you said you never made --  
21 you didn't know if you ever made a deal with Cheryl  
22 Potashnik. You didn't know if you made an agreement with  
23 Cheryl Potashnik, correct?

24 A. That's correct.

25 Q. And that's not what you testified in your

1 deposition. Cheryl Potashnik was a -- what was she for  
2 Southwest Management?

3 A. We considered her to be the owner.

4 Q. She was the COO or director or what? What was her  
5 title?

6 A. Mostly, we -- it was recognized as owner and I've  
7 heard COO. Quite honestly, I didn't know.

8 Q. Okay.

9 Mr. Carpenter, you were the executive vice  
10 president, the senior operating officer of Southwest  
11 Management for three-and-a-half years.

12 A. That's correct.

13 Q. The only one you reported to was Brian Potashnik;  
14 is that correct?

15 A. That's correct.

16 Q. All right. And you're telling this jury that you  
17 worked there with Cheryl Potashnik for three-and-a-half  
18 years and you don't know what her title was?

19 A. I believe she testified that sometimes she had a  
20 title, sometimes she didn't. It was COO, as owner.  
21 Certainly respected her as being a co-owner.

22 Q. Sir, I didn't ask you that question.

23 MR. L. FRIEDMAN: I object as being  
24 nonresponsive.

25 THE COURT: Repeat your question.

1 Q. (By Mr. L. Friedman) You worked at Southwest  
2 Housing Management for three-and-a-half years. During that  
3 period of time, did you learn what Mrs. Potashnik's title  
4 was?

5 A. Co-owner. And I've heard COO as well.

6 Q. Let's do it this way. You know that  
7 Mrs. Potashnik was an employee of Southwest Housing  
8 Management, correct?

9 A. At the beginning, yes.

10 Q. She -- Mrs. Potashnik worked for Southwest Housing  
11 Management, correct?

12 A. I'm not sure if she did the whole entire time that  
13 I was there, no.

14 Q. She worked at Southwest Housing Management  
15 in 2007. She was an employee of Southwest Housing  
16 Management in 2004 when you joined the company.

17 A. That I remember.

18 Q. She was an employee of Southwest Housing  
19 Management in 2005 when you were executive vice president of  
20 the company?

21 A. '5, '6, '7, remembering payroll reports, I don't  
22 recall Cheryl being on those.

23 Q. Okay. So you're telling this --

24 A. I may be wrong, but I do not recall Cheryl --

25 Q. You're telling this jury that you worked there

1 three-and-a-half years and you don't know if Brian or Cheryl  
2 were employees of Southwest Housing Management or any other  
3 company with the prefix Southwest in front of it; is that  
4 right?

5 A. I knew that they --

6 Q. I'm just asking you one question. Was Brian or  
7 Cheryl Potashnik an employee of any company that you know  
8 of?

9 A. Yes. Brian was an employee.

10 Q. Of what company?

11 A. He owned all the companies.

12 Q. And Cheryl was an employee of what company?

13 A. Of SGL and perhaps the management company, but she  
14 was one of the sellers.

15 Q. Sir, I'm only asking you during the time you  
16 worked there you acknowledge that Brian Potashnik was an  
17 employee of Southwest Management, Southwest Development, and  
18 Affordable Housing Construction, correct?

19 A. Yes.

20 Q. And with regard to Mrs. Potashnik you're telling  
21 the jury you don't know whether she was an employee of  
22 Southwest Management, correct, Southwest Housing Management?

23 A. I'd say a hundred percent I'm not sure.

24 Q. Do you know whether she was an employee of any  
25 Southwest company during the time you worked there?

1 A. I believe she was.

2 Q. And what company was that, sir?

3 A. I believe she was probably prorated out for all  
4 the companies, which would make her, probably, a portion of  
5 Southwest Housing Management as well.

6 Q. Okay. So to your knowledge Mrs. Potashnik was an  
7 employee of all the Southwest companies but at least a pro  
8 rata employee of Southwest Housing Management?

9 A. That would be my assumption. That's what I  
10 recall.

11 Q. All right. You don't remember never making any  
12 agreement with Ms. Potashnik?

13 A. I remember having a conversation with her and she  
14 said I've earned my bonuses and she agreed with the  
15 three-percent --

16 MR. L. FRIEDMAN: All right, I'm going to  
17 object to this --

18 A. -- agreement.

19 MR. L. FRIEDMAN: -- as nonresponsive.

20 A. So, yes, we did --

21 MR. L. FRIEDMAN: I'm going to object to it  
22 all as being nonresponsive.

23 THE COURT: Repeat your question.

24 He said, yes, they did have an agreement.

25 MR. L. FRIEDMAN: Okay. I'm going to play



1 Mr. Carpenter's deposition, Volume 2, second deposition.

2 MS. GIBSON: All right.

3 MR. L. FRIEDMAN: Page 111, Line 14 to 20.

4 Page 115, Line 21 to 25.

5 MS. GIBSON: Whoa, whoa, whoa. 111 what?

6 MR. L. FRIEDMAN: 111, 14 to 20.

7 MS. GIBSON: Uh-huh.

8 MR. L. FRIEDMAN: 115, 21 to 25. Or is it  
9 23? 116 -- Page 116, 1 to 10. And Page 151, Lines 3 to 8.

10 Wait for Ms. Gibson.

11 MS. GIBSON: Okay.

12 MR. L. FRIEDMAN: Okay. Go ahead.

13 (Video playing)

14 Q. "Cheryl Potashnik wasn't present with your meeting  
15 with Brian --"

16 A. "She was not present, correct."

17 Q. "-- on October 13th, 2006?"

18 A. "That's correct."

19 Q. "Cheryl Potashnik didn't make a valid and forcible  
20 agreement with you on October 13th, 2006? Correct?"

21 A. "That is correct."

22 Q. "I want to know from you -- I asked you to list  
23 the reasons that you claim you have a lawsuit or have a  
24 claim against Cheryl Potashnik."

25 A. "Cheryl Potashnik is -- is listed -- or CLG is

1 listed as one of the -- or a portion of the sellers, as she  
2 received proceeds from the sale as detailed in the  
3 Hexter-Fair disclosure memorandum closing document. I  
4 believe it was the -- the last closing."

5 Q. "Okay. What else?"

6 A. "Related documents to the -- legal documents  
7 related to the closing."

8 Q. "Okay. What other reason is there that you're  
9 suing Cheryl Potashnik?"

10 A. "As advice to counsel."

11 Q. "Did you, face to face, have an agreement with  
12 Cheryl Potashnik where you said, Cheryl, do you agree to be  
13 part of the amendment to my employment contract  
14 individually? Did you have that conversation with Cheryl  
15 and did she agree?"

16 A. "No, I did not have that conversation."

17 (Video ended)

18 Q. (By Mr. L. Friedman) Mr. Carpenter, does that  
19 refresh your memory that you never made any oral agreement  
20 with Cheryl Potashnik regarding salary, wages, or bonuses?

21 A. Yes. The way it was put there, yes.

22 Q. All right. Thank you.

23 And to finish up with this Email, at the  
24 bottom of your Email you say the attached document is a  
25 draft only and that once the substantive points are

1 confirmed I reserve the right to have it formally reviewed  
2 by an attorney to confirm it is complete. That's your  
3 language, correct?

4 A. Yes, ma'am -- or sir.

5 Q. I'm sorry. Say it again.

6 A. I said, yes, sir.

7 Q. Okay.

8 So on November 15th, 2007, you're sending  
9 Brian and Cheryl Potashnik a new deal -- new terms, new  
10 deal -- and you're telling them it's only a draft; and once  
11 you and the Potashniks agree to the substantive points then  
12 you reserve the right to have some lawyer confirm that it's  
13 complete, right?

14 A. Yes.

15 Q. And the implication is it's not complete, correct?

16 A. No. I'm still waiting on the response.

17 Q. Okay, no response from the Potashniks to this  
18 Email for your separation agreement?

19 A. Well, actually, there was a response saying that  
20 they would be look -- reviewing it.

21 Q. Let me put it differently. No agreement by the  
22 Potashniks to your Email or your separation agreement. They  
23 never agreed to it.

24 A. That's my version. No, they never agreed to it;  
25 nor did I agree to their version.

1 Q. Did they send you a written version of the  
2 separation agreement?

3 A. Yes.

4 Q. They sent you -- did they give you a severance  
5 agreement for \$150,000?

6 A. They gave me a separate -- pardon me -- I believe  
7 it was called a separation agreement.

8 Q. On November 1st?

9 A. Yes.

10 Q. And offered you \$150,000?

11 A. Yes.

12 Q. And you turned it down?

13 A. I turned it down because of --

14 Q. I didn't say because. You turned it down?

15 A. Yes, I did.

16 Q. Because you wanted more?

17 A. I wanted what I was earned --

18 Q. You wanted more?

19 A. I wanted what I was earned and what I was told we  
20 had an agreement for.

21 MR. L. FRIEDMAN: I'm going to object to  
22 all of that as being nonresponsive.

23 THE COURT: Sustained.

24 Limit your response to his question.

25 Q. (By Mr. L. Friedman) All right, let's move on.

1                   You also stuck in a guarantee here. In  
2 order to induce employee to enter into this agreement, the  
3 Potashniks jointly and severally, hereby personally and  
4 unconditionally, guarantee payment to employee of all  
5 amounts provided for herein strictly in accordance with this  
6 agreement.

7                   Nobody agreed to that. Not Affordable  
8 Housing, not management development, the Potashniks. Nobody  
9 agreed to that?

10           A. That's correct.

11           Q. That's something new you put in this agreement?

12           A. That was one of the things I put in the agreement,  
13 yes.

14           Q. And that was never agreed to?

15           A. That detail was not in the discussion.

16           Q. All right. Let's move on.

17                   Now, this is an interesting provision.  
18 Paragraph 15 of the separation -- of your separation  
19 agreement you put in a no amendment unless it's writing  
20 provision; is that correct?

21           A. It appears that I did.

22           Q. You put if -- if they agree to this agreement  
23 nobody could modify it. Actually, I'll read the words. No  
24 attempted modification or waiver of any of the provisions of  
25 this agreement shall be binding on either party unless in

1 writing and signed by both employee and company.

2 That's what you wanted in this agreement?

3 A. If it encompassed --

4 Q. I'm just asking if you wanted that in the  
5 agreement. That's why you put it in there?

6 A. If it encompassed the oral and the unpaid bonuses,  
7 yes.

8 MR. L. FRIEDMAN: Objection, nonresponsive.

9 THE COURT: Repeat your question.

10 Q. (By Mr. L. Friedman) You put this language in your  
11 separation agreement because you specifically wanted it in  
12 there, correct?

13 A. Or it was in the template.

14 Q. If it was in the template or if it was in the  
15 Encyclopedia Britannica or Wikipedia, you took it, you read  
16 it, you understood it, and you put it in the separation  
17 agreement that you drafted, correct?

18 A. Yes.

19 Q. Because you wanted it there, correct?

20 A. The Potashniks wanted it.

21 Q. You wanted it there, correct?

22 A. I had an oral agreement that we're trying to  
23 consummate. So, yes, I --

24 MR. L. FRIEDMAN: I'm going to object --

25 A. -- tried to put it in.

1 MR. L. FRIEDMAN: -- as being  
2 nonresponsive.

3 THE COURT: Okay.

4 His question is did you want it there. You  
5 can answer yes or no or tell him you can't answer it yes or  
6 no.

7 THE WITNESS: I can't answer it  
8 appropriately.

9 MR. L. FRIEDMAN: All right. Go to the  
10 next one.

11 Q. (By Mr. L. Friedman) In December of 2007, you  
12 decided to sue the Potashniks, correct?

13 A. Yes.

14 Q. You didn't tell them that, but you made that  
15 decision?

16 A. I'm not sure if I gave forewarning or not --

17 Q. All right.

18 A. -- for everyone.

19 Q. And in March 11th of 2008, you filed a sworn  
20 plaintiff's original petition at the courthouse, correct?

21 A. If that information's correct, yes.

22 Q. See the petition. Whole petition, first thing.  
23 This is a copy of the plaintiff's original petition, a  
24 petition for temporary restraining order and injunction that  
25 you filed March 8th -- I'm sorry -- March 11th, 2008.

1 It says Jeffrey W. Carpenter, plaintiff, versus Southwest  
2 Housing Development, Inc., Southwest Housing Management  
3 Company, Inc., Affordable Housing Construction, Inc.,  
4 Brian Potashnik and Cheryl Potashnik, even though you've  
5 never made an agreement with Cheryl Potashnik.

6 Did I read that correctly?

7 A. Yes.

8 Q. And you filed it in County Court at Law Number 5,  
9 which is this court, and that's why we're here today.

10 A. Yes.

11 Q. Correct?

12 Now, let's turn to the last page where the  
13 verification is, okay. And on the back of that petition,  
14 see where it says verification?

15 A. Yes.

16 Q. You swear before a notary public.

17 MR. L. FRIEDMAN: Let's go down to the  
18 bottom. Nope, all factual averments.

19 MR. PAGE: Right there?

20 MR. L. FRIEDMAN: Yeah. Perfect.

21 Q. (By Mr. L. Friedman) You swore that all factual  
22 statements, averments or statements, contained in Paragraphs  
23 20, 21, 22, 25, 26, 27, and 30 through 35 of this document,  
24 plaintiff's original petition, are within your personal  
25 knowledge and true and correct.



1                                    You signed it Jeffrey Carpenter?

2                    A.    Yes, I signed it.

3                    Q.    March 11th, 2008, notarized by Gloria A.  
4 Hernandez, correct?

5                    A.    Yes.

6                    Q.    Before this petition was signed you worked on it  
7 with your lawyers at the time, Rogge Dunn?

8                    A.    Briefly. I was in the hospital most of the time,  
9 but yes.

10                  Q.    You worked on it with your lawyers?

11                  A.    Rogge Dunn spearheaded it, yes.

12                  Q.    You read this petition before you signed it,  
13 correct?

14                  A.    I assume, yes.

15                  Q.    You understood the petition before you signed it?

16                  A.    Yes.

17                  Q.    And you swore that the statements in Paragraphs  
18 20, 21, 22, 25, 26, 27, and 30 through 35 were within your  
19 personal knowledge and true and correct?

20                  A.    That's what it says.

21                  Q.    And do you know what personal knowledge is?

22                  A.    Yes.

23                  Q.    What is it?

24                  A.    That I'm personally aware of the situation.

25                  Q.    Saw it, felt it, heard it, touched it?

1 A. Right.

2 Q. Is that your understanding?

3 A. Yes, sir.

4 Q. Okay.

5 So we go to paragraph --

6 MR. L. FRIEDMAN: Next paragraph.

7 Q. (By Mr. L. Friedman) We go to Paragraph 26, one of  
8 the paragraphs you swore to. And it says, When the sale  
9 process began, one or more of the defendants agreed to pay  
10 plaintiff three percent of the gross sale, less normal  
11 closing costs of brokerage fees, attorney's fees related to  
12 the sale -- not the criminal case -- title fees and other  
13 normal closing costs. The agreement was made in  
14 consideration for, in part, plaintiff remaining an employee  
15 of one or more of the defendants to assist in effectuating  
16 the sale. That means closing, doesn't it?

17 A. Yes.

18 Q. All right.

19 Now, that's not the same formula you  
20 testified to this morning, is it?

21 A. No, it's not.

22 Q. And that doesn't say anything about employee  
23 severance or bonuses, does it?

24 A. That's the part that's missing, yes.

25 Q. Well, that's one part that's missing.

1                   You swore on March 8th -- March 11th, 2008,  
2                   that that was within your personal knowledge and true and  
3                   correct.

4                   So we have normal closing costs, not the  
5                   criminal case -- that was a material term that you used at  
6                   the time -- and stayed till closing. And nothing about  
7                   severance bonuses, correct?

8                   (No verbal response)

9                   Q.     Correct?

10                  A.     Yes, from what you just said.

11                  Q.     No mention of severance bonus. Yes. Exclude  
12                  criminal case. I'm just going to put stay period. End of  
13                  closing required.

14                  And that was the truth or that was what you  
15                  swore to on March 8 [sic], 2011 [sic], correct?

16                  A.     Yes.

17                  Q.     Let's see what else was in your petition.  
18                  Anything else?

19                  Let's move on. Next thing was your  
20                  deposition, March 16th, 2010, and we've already talked about  
21                  that. You said the deal was made on May 6, 2006. Lunch  
22                  was -- at a lunch at Cafe de Brazil. We already talked  
23                  about this.

24                  A.     I believe I said on or about May 6.

25                  Q.     Okay, on or about May 6.

1                   Let's look at Mr. Carpenter's first amended  
2                   petition, July 19th, 2013. Paragraph 22 of your first  
3                   amended petition, that's five years later. Approximately,  
4                   five years later.

5                   Paragraph 22 of your first amended petition  
6                   says, During Mr. Carpenter's employment tenure,  
7                   Brian Potashnik offered that Mr. Carpenter would receive at  
8                   least three percent of the net proceeds from the sale of  
9                   Southwest Housing entities' assets if he would stay on and  
10                  assist in effectuating the asset sale. Your words.

11                  The net proceeds formula was gross  
12                  compensation from the sale transaction minus closing costs,  
13                  the brokerage fees, attorney's fees relating to the sale  
14                  transaction fees, title fees of the normal closing costs,  
15                  and any compensation paid from the sale proceeds to any  
16                  other employees.

17                  Now, that's not the same formula that we've  
18                  seen anywhere else before. You agree with that,  
19                  Mr. Carpenter?

20                  A. I agree to the corporate employees.

21                  Q. So it's not the same as any other formula and now  
22                  says nothing about criminal fees, correct? Left out  
23                  criminal fees?

24                  A. Criminal fees was never part of the true formula.

25                  Q. All right, but it was in your sworn petition,

1 right?

2 A. My attorneys put it in there, yes.

3 Q. Is that an excuse?

4 A. Yeah.

5 Q. You read it, you proofed it, you swore to it.

6 You're blaming your lawyers?

7 A. Yeah.

8 Q. Okay. And I'll go back and write blaming lawyers.

9 And added any compensation paid to any  
10 other employees, correct?

11 A. Yes.

12 Q. Any comp paid to any other employees. Okay.

13 MR. L. FRIEDMAN: Let's go to the next one.  
14 Well, show the first page of that. That was Jeffrey W.  
15 Carpenter's first amended petition and then that was  
16 Paragraph 22.

17 MR. DONOHUE: Move these two petitions into  
18 evidence.

19 MR. L. FRIEDMAN: Say it again.

20 MR. DONOHUE: You want to move -- ask for  
21 admittance of these two petitions.

22 MR. L. FRIEDMAN: Asking for admission of  
23 the two petitions.

24 MS. GIBSON: Your Honor, just like anything  
25 else I'd like to admit like that, it's not appropriate,

1 other than to use for impeachment.

2 THE COURT: Objection's sustained. We  
3 don't admit the petitions or the interrogatories.

4 MR. L. FRIEDMAN: Note my objection.

5 Your Honor, the original petition was a  
6 sworn statement.

7 THE COURT: We'll take it up.

8 MR. L. FRIEDMAN: Let's move on. Let's go  
9 to the next one. I defer to your current wisdom.

10 THE COURT: Okay.

11 Q. (By Mr. L. Friedman) On July 22nd, 2013,  
12 Mr. Carpenter, you filed a sworn declaration with this  
13 court. Do you remember that?

14 A. Yes.

15 Q. Defendants' Exhibit Number 43.

16 MR. L. FRIEDMAN: May I approach the  
17 witness, Your Honor?

18 THE COURT: Certainly.

19 What number was it?

20 MR. L. FRIEDMAN: Number 43.

21 I'm handing this to you, Mr. Carpenter,  
22 Number 43.

23 Let's show the whole thing and then the  
24 signature.

25 Q. (By Mr. L. Friedman) So this is a document

1 entitled Declaration of Jeffrey Carpenter. Remember this?

2 A. Vaguely, yes.

3 Q. Well, you prepared this declaration, didn't you?

4 A. Yes.

5 Q. With the help of your lawyers?

6 A. It's been a while. Yes.

7 Q. Okay. And it's a how-many-page document?

8 Eleven-page document, right?

9 A. Yes.

10 MR. L. FRIEDMAN: Let's turn to the last  
11 page so you can see his signature.

12 Q. (By Mr. L. Friedman) And you signed this on the  
13 last page --

14 A. Yes.

15 Q. -- correct?

16 And the paragraph above it says, My name is  
17 Jeffrey Wayne Carpenter. My date of birth is November 2nd,  
18 1958. My address is 7246 Mimosa Lane, Dallas, Texas 75230.  
19 And then you say, I declare under penalty of perjury that  
20 the foregoing is true and correct. Executed in Dallas  
21 County, Texas, on the 22nd of July, 2013.

22 And then is that your signature above the  
23 printed letters Jeffrey W. Carpenter?

24 A. That is my signature.

25 Q. Okay. So you swore under penalty of perjury

1 everything in this declaration was true and correct?

2 A. Yes.

3 Q. You read this declaration before you signed it,  
4 correct?

5 A. Yes.

6 Q. You understood it before you signed it?

7 A. I believe so.

8 Q. You prepared this declaration, correct?

9 A. With my attorney's counsel.

10 Q. So this was not prepared by you but it was signed  
11 by you?

12 A. I think it was a collaborative effort.

13 Q. So it was prepared by you and your attorney but  
14 not signed by your attorney?

15 A. I can't say for sure, but I believe so.

16 Q. Refresh my memory who your attorney was at the  
17 time.

18 A. I'm not sure.

19 Q. All right.

20 Let's look at what -- what you declared  
21 under penalty of perjury was true and correct. Looking at  
22 Paragraph 5, try to go through this quickly and just pick  
23 out portions.

24 Middle of Paragraph 5 you say, I had  
25 further discussions about the details of compensation with



1 Mrs. Potashnik, who explained that Mr. Potashnik normally  
2 handled these issues but that she was stepping in because  
3 Mr. Potashnik was not available to do it. Mr. Potashnik and  
4 I discussed and agreed -- I'm sorry -- Mrs. Potashnik and I  
5 discussed and agreed that there would be a minimal annual  
6 bonus, even though she insisted on leaving the word  
7 "discretionary" in the phrase "minimum discretionary bonus  
8 potential".

9 That was in connection with preparing your  
10 original employment agreement in February 2004, correct?

11 A. Yes.

12 Q. Okay. And that's your language?

13 A. I don't know about that.

14 Q. That's your language or your lawyer's language,  
15 but you swore it was true and correct under penalty of  
16 perjury?

17 A. I thought you were referring to the discretionary  
18 mention in my employment agreement.

19 Q. Well, this -- these two sentences that I  
20 highlighted refers to your negotiations with Mrs. Potashnik  
21 leading up to the signing of your original employment  
22 agreement.

23 A. Okay.

24 Q. Now, is that correct?

25 A. Yes.

1 Q. And you say under penalty of perjury that you had  
2 further discussions about the details of compensation with  
3 Mrs. Potashnik, who explained that Mr. Potashnik normally  
4 handled these issues; that she was stepping in because  
5 Mr. Potashnik was not available to do it. Is that true?

6 A. That's true.

7 Q. And then you said Mrs. Potashnik and I discussed  
8 and agreed there would be a minimum annual bonus, even  
9 though she insisted on leaving the word "discretionary" in  
10 the phrase "minimum discretionary potential bonus". That's  
11 correct, isn't it?

12 A. Yes.

13 Q. And you agreed to leave the word "discretionary"  
14 in the bonus provision of your original employment contract?

15 A. Not wanting to, but yes.

16 Q. Okay.

17 Let's go to the next paragraph.

18 MS. GIBSON: And, Your Honor, just for a  
19 moment, I think Larry should really only be using this for  
20 impeachment. I'm just -- I don't mind if I get the same  
21 consideration.

22 THE COURT: It's -- you'll get the same  
23 consideration --

24 MS. GIBSON: Okay.

25 THE COURT: -- if you're talking about this

1 document --

2 MS. GIBSON: Okay.

3 THE COURT: -- or any affidavit.

4 Okay, go ahead, Mr. Friedman.

5 Q. (By Mr. L. Friedman) Paragraph 17 says, The  
6 initial offer happened during a meeting at Brian Potashnik's  
7 home that I believe took place on May 22nd, 2006.

8 A. It does not say that.

9 Q. Well, read that first sentence.

10 A. It says took place on or around --

11 Q. I apologize.

12 A. -- May 22nd, 2006.

13 Q. I apologize. I do apologize.

14 So the declaration that you and your lawyer  
15 worked on, correct?

16 A. Yes.

17 Q. And I'm assuming you were very candid with your  
18 lawyer about the facts in this case?

19 A. Yes.

20 Q. So you say the oral agreement occurred on or about  
21 May 22nd, 2006, correct?

22 A. Yes.

23 Q. The lawyer got that information from you, 'cause  
24 your lawyer wasn't there, correct?

25 A. That's correct.

1 Q. And your lawyer relied on you giving her truthful  
2 information?

3 A. Yes, and I can verify why.

4 Q. Okay.

5 Let's go to the next one. Paragraph 19  
6 says, On or about October 13, 2006, Brian Potashnik and I  
7 met at Cafe Express and discussed the sales-related issues  
8 and the sales proceeds bonus that I would receive. He, at  
9 this time, had a better handle on the potential sales price.  
10 Mr. Potashnik informed me that I would receive a minimum of  
11 three percent of the net proceeds, with the net proceeds  
12 based on gross compensation from the sale transaction minus  
13 closing costs of brokerage fees, attorney's fees related to  
14 the sale transaction, title fees, other normal closing  
15 costs, and any compensation paid from the sale proceeds to  
16 any other employees. We estimated closing costs -- now it  
17 says not to exceed three percent -- of the total sales price  
18 and that I would receive around \$1,020,000 from the sales  
19 proceeds.

20 Did I read that accurately?

21 A. Yes.

22 Q. Is that a little different than your prior  
23 testimony?

24 A. Very slightly different.

25 Q. Yeah, just a little different.

1                   Now we have closing costs not to exceed  
2                   three percent, right? Did I read that correctly?

3                   A.     Yes.

4                   MS. GIBSON: Yeah, I object to his  
5                   characterization of what it says.

6                   MR. L. FRIEDMAN: I'm sorry. I just didn't  
7                   hear.

8                   MS. GIBSON: You're talking about the  
9                   estimate. We "estimated" a closing cost --

10                  MR. L. FRIEDMAN: Estimated closing costs  
11                  not to exceed three percent. Okay, I stand corrected.

12                  Q.     (By Mr. L. Friedman) The estimated closing costs  
13                  not to exceed three percent is a new term that we've not  
14                  seen before, correct?

15                  A.     I can't say if we have or haven't. I remember the  
16                  conversation quite well --

17                  Q.     Mr. Carpenter, in all of the previous times you  
18                  have told this story in these court proceedings you have  
19                  never before mentioned the term "estimated cost not to  
20                  exceed three percent"; isn't that correct?

21                  A.     I -- I don't believe it's correct. I believe in  
22                  some other forms that we have similar language. But for the  
23                  most part we say normal --

24                  Q.     That's what you're telling the jury today; that  
25                  you believe normal closing costs means the same as estimated

1 cost not to exceed three percent?

2 A. That was the discussion that Brian and I had.

3 Q. And you left that out when I asked you what the  
4 terms of your agreement were this morning, right?

5 A. No, sir. Again, it was estimated.

6 Q. Then you said, I asked Mr. Potashnik to put the  
7 agreement in writing. Mr. Potashnik and Randy Alligood, the  
8 Southwest Housing attorney, would be putting it together.

9 Randy Alligood was not the only Southwest  
10 Housing attorney, was he?

11 A. No.

12 Q. Southwest Housing had dozens of attorneys at that  
13 time, correct?

14 A. Yes, but Randy was the go-to person.

15 Q. Just wasn't my question. My question is another  
16 lawyer could have been asked to put that in writing if that  
17 was the deal.

18 A. That may be the case but that's what I was told,  
19 it was Randy Alligood.

20 MR. L. FRIEDMAN: I'm going to object to  
21 all of it as being nonresponsive.

22 THE COURT: What was your question again?

23 MR. L. FRIEDMAN: Another lawyer could have  
24 been asked by Mr. Potashnik --

25 THE COURT: He said that may be the case.

1 After that it was nonresponsive.

2 Q. (By Mr. L. Friedman) At the time the specific  
3 amount and formula were agreed upon -- well, you've already  
4 testified that the specific amount was not agreed upon,  
5 correct? On October 13, 2006, a specific amount that --

6 A. The formula was --

7 Q. -- you would get was not agreed upon.

8 A. The formula was --

9 Q. Your testimony is that a formula was agreed upon  
10 but not a specific amount --

11 A. That's correct.

12 Q. -- correct?

13 So that's not accurate. Somebody misstated  
14 that, right?

15 A. Yes.

16 Q. Another mistake?

17 A. Apparently.

18 Q. Paragraph 19.

19 Okay. And then it says, Mr. Potashnik  
20 again implored me to stay on, claiming that continuity in my  
21 continued services were essential to the success of the  
22 transaction. Meaning you're claiming Mr. Potashnik wanted  
23 you to stay on through the closing, correct?

24 A. Yes.

25 Q. All right. Let's move on.

1 THE COURT: We still have another afternoon  
2 break. It depends on how long --

3 MR. L. FRIEDMAN: Sure. This is good.

4 THE COURT: We'll take our 10-minute break,  
5 ladies and gentlemen.

6 (The jury exited the courtroom.)

7 (Recess taken)

8 (The jury entered the courtroom.)

9 THE COURT: Welcome back. Good afternoon,  
10 ladies and gentlemen.

11 We'll continue with the trial.

12 Mr. Carpenter is our witness; Mr. Friedman is the examining  
13 attorney. And we're going to go 30 more minutes, until 4:35  
14 or so, before we stop for the day.

15 Mr. Friedman.

16 MR. L. FRIEDMAN: Yes. Thank you very  
17 much.

18 Whatever the judge says goes.

19 Q. (By Mr. L. Friedman) Mr. Carpenter, has there been  
20 any other occasions where you've recited a different oral  
21 agreement than the one you recited earlier today when I  
22 asked you to tell the jury what agreement you made on  
23 October -- when you made the agreement and what agreement  
24 you made?

25 A. Not that I'm aware of.



1 Q. Do you recall filing or sending sworn  
2 interrogatory answers to the defendants on August 16, 2013?

3 A. No, I don't.

4 MR. L. FRIEDMAN: Let's see if Mr. Page can  
5 help me on this one.

6 Q. (By Mr. L. Friedman) So on August 16, 2013 --

7 MR. L. FRIEDMAN: I don't have a full  
8 screen, Mr. Page. No discounts if it doesn't have a screen.

9 Q. (By Mr. L. Friedman) So this is a document  
10 entitled Jeffrey Carpenter's Objections and Answers to  
11 Southwest Housing Management Company, Inc.'s First Set of  
12 Interrogatories. Do you remember this?

13 A. I can't say I do.

14 Q. Okay. Let's go to the back.

15 MR. L. FRIEDMAN: Do we have a signature on  
16 here?

17 This was signed by Ms. Gibson. And do you  
18 have a signature for -- this was submitted on  
19 Mr. Carpenter's behalf. Okay.

20 Let's go to Interrogatory Number 2 and the  
21 answer to Number 2.

22 Do you have the full text, 'cause I don't  
23 see a full text? Would you like me to try the Elmo?

24 Still not complete.

25 Q. (By Mr. L. Friedman) Okay. So Interrogatory

1 Number 2, Mr. Carpenter, as you can see, asks you to please  
2 give a complete and chronological account of all  
3 communications which took place between you, Southwest  
4 Housing Management Company, Inc., related to your contention  
5 that Southwest Housing Management owes you the amount of  
6 \$150,000 in owed bonuses as alleged in plaintiff's original  
7 petition. And then there's some objections. Now let's go  
8 down to the response.

9 Good objections.

10 And then in your answer to Number 2 --

11 MR. L. FRIEDMAN: I still need a full  
12 screen. Can you raise it up so the jury can see it? Okay,  
13 good. Can you make it bigger?

14 Make it bigger so I can see it.

15 (Pause)

16 MR. L. FRIEDMAN: Good. Thank you.

17 Q. (By Mr. L. Friedman) So in your answer to  
18 Interrogatory Number 2 you say, During my employment tenure,  
19 Brian Potashnik offered that I would receive at least three  
20 percent, at least three percent of the net proceeds from the  
21 sale of the Southwest Housing operational units' assets and  
22 Ms. Potashnik's and -- Ms. Potashnik's and his partnership  
23 interest assets in the apartment communities -- and you  
24 define that as sales proceeds bonus -- if I would stay on  
25 and assist in effectuating the asset sale -- and that was a

1 new component -- as long as needed. I accepted the offer  
2 and committed to stay as long as needed. That is, until the  
3 management leadership changed or the closing of the asset  
4 sale or other date when I was no longer needed.

5 Mr. Potashnik and I agreed that net  
6 proceeds formula was gross compensation from the sale  
7 transaction minus closing cost of brokerage fees, attorney's  
8 fees related to the sale transaction, title fees, other  
9 normal closing costs, and any compensation paid from the  
10 sale proceeds of any other employees. The initial offer did  
11 not specify the specific percentage or formula. The  
12 specific percentage and formula were agreed later when  
13 Mr. Potashnik had a better handle on the likely sales price  
14 for the Southwest Housing assets and his and Ms. Potashnik's  
15 Affordable Housing assets, the partnerships that owned the  
16 properties.

17 You see that, sir?

18 A. Yes.

19 Q. So that's a lot different than the renditions  
20 we've seen, the many renditions we've seen throughout the  
21 day. Do you agree?

22 A. It's slightly different.

23 Q. Well, okay.

24 So let's look at it. So in your  
25 interrogatory response, Interrogatory Response Number 2, you

1 now say at least three percent of net proceeds.

2 And now we see a new term, "operational  
3 units' assets". What is that?

4 A. The main companies.

5 Q. Operational units' assets means the main  
6 companies. And who would those be?

7 A. Development construction management.

8 Q. But that term hasn't been used before, correct?

9 A. No, sir.

10 Q. And Mrs. Potashnik's and his partnership, is that  
11 just a mistake? Should that be Mr. Potashnik or should it  
12 be her partnership interest?

13 A. It should be Mister.

14 Q. Okay. So this is only Mr. Potashnik's partnership  
15 interest?

16 A. Wait a minute.

17 (Pause)

18 A. Yes.

19 Q. Okay.

20 And what did you mean in this answer when  
21 you said partnership interest? That's new to the equation.

22 A. That's -- that's individual asset --

23 Q. You talking about the 50, 60 --

24 A. The 55 communities.

25 Q. So that's in addition to the assets of Southwest

1 Management, Southwest Development, and Affordable Housing  
2 Construction?

3 A. Yes, in addition.

4 Q. So that's new, correct?

5 A. No. Just said a different way.

6 Q. Said a different way.

7 Okay. I would say it on effectuating the  
8 sale for as long as needed. As long as needed is a new  
9 term, correct?

10 A. It's a new term, but at that time we had a target  
11 date, target time frame.

12 Q. No, but as long as needed was not something that  
13 you're alleging Mr. and Mrs. Potashnik agreed. That's  
14 something you unilaterally put in here.

15 A. I don't believe so.

16 Q. I mean, there was no -- you didn't meet with the  
17 Potashniks after you filed this lawsuit and then entered  
18 into some new oral agreement, correct?

19 A. They asked me to stay on --

20 Q. Just my question, you never asked and made any  
21 other oral agreements, correct?

22 A. No, I did.

23 Q. Okay. So this is a new term that we've not seen  
24 before in all of your other renditions of your oral  
25 agreement, correct?

1 A. It's worded differently, yes.

2 Q. Okay. For as long as needed. And I'm going to  
3 say worded differently. And you're going to tell this jury  
4 that that means the same as stay through closing?

5 A. Well, not if we continue to read on I won't.

6 Q. And then it says, Until the management leadership  
7 changed or the closing of the asset sale or other date when  
8 I was no longer needed.

9 Mr. Potashnik and I agreed that net  
10 proceeds formula was gross compensation for the sale  
11 transaction minus closing cost of brokerage fees, attorney's  
12 fees related to the sale transaction, title fees of the  
13 normal closing costs, and any compensation paid from the  
14 sale proceeds to any other employees.

15 Did I get that right?

16 A. Yes.

17 Q. Now you want to tell this jury that for as long as  
18 needed is a new term or it means the same as stay until  
19 closing?

20 A. Well, it's a what-if scenario until the management  
21 leadership changed or the asset -- closing of the asset  
22 sale --

23 Q. Okay.

24 A. -- or other date. So it's a moving target, so to  
25 speak.

1 Q. So you'll agree it's a new term?

2 MS. GIBSON: I'm sorry. What did you say?

3 Q. (By Mr. L. Friedman) I said, Mr. Carpenter, you  
4 will agree that that's an added term or a different term or  
5 a new term, correct?

6 A. A different term, yes.

7 Q. All right. I'll put down a different term.

8 A. Or explanation.

9 Q. All right. I'll put down both.

10 Different term, explanation, but it's  
11 nothing that you agreed to with Mr. Potashnik. You didn't  
12 have a what-if scenario when you made the alleged oral  
13 agreement with Mr. Potashnik, correct?

14 A. Well, we did have an agreement for me to help  
15 assist in closing the sale. And it -- depending on the time  
16 frame, it was going to be either the sales closing or until  
17 my time is no longer needed, knowing that I was not going to  
18 have a position to go to. So it was a floating target.

19 Q. All right. None of that was agreed to when you  
20 had the bump, shake, oral agreement with Mr. Potashnik in  
21 October 13, 2006?

22 A. We had -- we had a targeted frame of closing in,  
23 as I said before, in April, May of 2007. And as we got  
24 closer to that it became more of a moving target.

25 MR. L. FRIEDMAN: I'm going to object to

1 the rest of it as being nonresponsive.

2 Q. (By Mr. L. Friedman) Now, this says initial offer  
3 did not specify the specific percentage of formula. So  
4 according to this answer in October of 2006, October 13th,  
5 2006, you didn't have a specific formula. Or is this wrong?  
6 Is this a mistake too?

7 A. No. What I believe the slide is saying is when  
8 Mr. Potashnik told me he was selling the business that we  
9 didn't have the details worked out at that point in time.

10 Q. And so there was no agreement when he told you  
11 they were selling -- that you were selling the business --  
12 that he was selling the business?

13 A. That he was selling the business and wanted me to  
14 stay --

15 Q. But there was no agreement --

16 A. -- and do my job.

17 Q. -- when Mr. Potashnik first told you he was  
18 selling the business?

19 A. Not on that date, no. May --

20 Q. And when was that?

21 A. May --

22 Q. You're looking at your script. Please don't look  
23 at your script. Look at me. Can you answer without looking  
24 at your script?

25 A. Yes, I can.



1 Q. All right. Well, what was the date?

2 A. May 21st, the day after my daughter's --

3 Q. Okay.

4 A. -- high school graduation.

5 Q. Thank you. Congratulations.

6 But there was no agreement on May 21st,  
7 2006?

8 A. A lucrative bonus program was going to be put in  
9 place once we got farther down the road.

10 Q. Mr. Carpenter --

11 A. So there was no --

12 MR. L. FRIEDMAN: I'm going to object --

13 A. -- there was no --

14 MR. L. FRIEDMAN: -- to all of this being  
15 nonresponsive.

16 THE COURT: Repeat your question.

17 Q. (By Mr. L. Friedman) Mr. Carpenter, there was no  
18 agreement between you and Mr. Potashnik on May 26, 2006, or  
19 anytime prior to October 13th, 2006?

20 A. May 21st. Correct.

21 Q. Because you say the initial offer did not specify  
22 the specific percentage or formula, and the specific  
23 percentage or formula were agreed later when Mr. Potashnik  
24 had a better annual on the likely sales price for the  
25 Southwest Housing assets and his and Ms. Potashnik's

1 Affordable Housing assets, the partnerships that owned the  
2 properties.

3 Now, adding the partnerships to this  
4 formula is also something new; isn't that correct?

5 A. It's new for today, yes.

6 Q. Well, it's new for every time that you have stated  
7 what the formula was. You had never stated that before, had  
8 you?

9 A. Well, they're -- they're selling the partnerships  
10 of the assets. So, again, it's verbiage.

11 Q. But this is the first time you used that verbiage,  
12 correct?

13 A. The dialogue is appropriate for --

14 Q. No, I'm just asking about the verbiage, sir.

15 A. Yes.

16 Q. It's the first time you used that verbiage?

17 A. Yes.

18 Q. Because you're continuing to negotiate with  
19 Mr. Potashnik, correct?

20 A. No, sir, not after --

21 Q. You were trying to tighten the deal.

22 A. -- my five -- asking for five percent I was not  
23 trying to renegotiate the deal.

24 Q. Okay. So what's the date of your asking for five  
25 percent, sir?

1 A. It was the next business day after October 13th.

2 Q. All right. So October 14th you were still  
3 negotiating, correct?

4 A. I believe so.

5 Q. So I'm going to put down here October 14th.

6 And that was the day you asked  
7 Mr. Potashnik for five percent and Mr. Potashnik says no,  
8 correct?

9 A. Yes.

10 Q. Interrogatories. Okay.

11 MR. L. FRIEDMAN: This might be a good  
12 place to stop before I get into a new topic.

13 THE COURT: We'll stop for the day, ladies  
14 and gentlemen. We'll see you tomorrow morning at 9:00  
15 o'clock.

16 MR. L. FRIEDMAN: Thank you, Your Honor.

17 (The jury exited the courtroom.)

18 (End of proceedings)

19

20

21

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23

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25

1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Vikki L. Ogden, Official Court Reporter in and for  
4 the County Court at Law Number 5 of Dallas County, State of  
5 Texas, do hereby certify that to the best of my ability the  
6 above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the parties  
9 to be included in the Reporter's Record, in the above-styled  
10 and -numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that the total cost for the  
13 preparation of the Reporter's Record is \$1,730.00 and will  
14 be paid by Friedman & Feiger, LLP.

15 WITNESS MY OFFICIAL HAND this the 19th day of February,  
16 2018.

17  
18  
19 /S/ Vikki L. Ogden

20 VIKKI L. OGDEN, Texas CSR# 6309  
21 Official Court Reporter  
22 Dallas County Court at Law No. 5  
23 600 Commerce Street, Floor 5  
24 Dallas, Tx. 75202  
25 (214)653-6443  
Certification Expires: 12/31/18

REPORTER' S RECORD (EXCERPT)

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FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
04/29/2019 6:14:22 PM

Trial Court Cause No. CC-08-02072-E

JEFFREY W. CARPENTER,

Pl a i n t i f f ,

VS

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC. , ET AL,

Defendants.

) IN THE DALLAS COUNTY  
) Clerk

) COURT AT LAW NO. 5

) DALLAS, TEXAS

TRIAL ON THE MERITS

On the 30th day of January, 2018, the following proceedings came on to be heard within the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the HONORABLE MARK GREENBERG, Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.

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ALSO PRESENT: Steve Page, A/V Technician

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## PLAINTIFF'S

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## DEFENDANTS'

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P R O C E E D I N G S

January 30, 2018

(The jury entered the courtroom.)

THE COURT: Welcome back. Good morning,  
ladies and gentlemen.

We'll start right into the trial. When we  
stopped yesterday Mr. Carpenter was the witness and  
Mr. Friedman was the examining attorney, and we'll ask him  
to pick up where he left off.

MR. L. FRIEDMAN: Are these the same  
people?

THE COURT: Yeah, same people. I believe  
so.

JEFFREY W. CARPENTER,

having been previously sworn, testified as follows:

CROSS-EXAMINATION (Cont'd)

BY MR. L. FRIEDMAN:

Q. All right. Yesterday, Mr. Carpenter, we -- I  
referred you to a couple of the petitions that you filed in  
this case, and I'd like to go back to the second amended  
petition that was filed -- or you filed in this case. Do  
you recall Jeffrey W. Carpenter's second amended petition?

A. I can't say I recall it, but --

Q. But it was filed on your behalf?

A. Yes, yes.

1 Q. Let's go to Paragraph 28. Now, in your petition  
2 you filed, read it, understood before you filed it.  
3 Paragraph says, The provisions in the 2004 agreement --  
4 assuming referring to your employment agreement -- providing  
5 that the employer make decisions in the employer's sole  
6 discretion include --

7 MR. L. FRIEDMAN: And I redacted,  
8 Your Honor, the portion that purports to explain the law in  
9 the state of Texas.

10 Q. (By Mr. L. Friedman) But that's what you wrote or  
11 was written on your behalf, an acknowledgement that the --

12 A. Yes.

13 Q. -- employer may make decisions in the employer's  
14 sole discretion?

15 A. Yes.

16 Q. Yes?

17 A. Yes.

18 Q. All right. Now let's go to the third amended  
19 petition. Okay, do you remember the third amended petition?

20 A. No, sir, but there it is.

21 Q. Yeah. Another petition filed by you or on your  
22 behalf, correct?

23 A. Yes.

24 Q. Okay.

25 MR. L. FRIEDMAN: So what was that

1 paragraph, 29?

2 (Pause)

3 MR. L. FRIEDMAN: I'm sorry, 28.

4 Q. (By Mr. L. Friedman) And, again, you state the  
5 provisions in the 2004 agreement providing that the employer  
6 may make decisions in the employer's sole discretion  
7 include -- then there was a statement of the law that I  
8 redacted. The Court will -- the Court will instruct the  
9 jury about the law. But that was your statement made on  
10 your behalf in your petition, correct?

11 A. Yes.

12 Q. That the employer may make decisions in the  
13 employer's sole discretion, correct?

14 A. Yes.

15 Q. Okay.

16 Now let's go to November 2nd in 2007, your  
17 last day of pay right after you were terminated by Southwest  
18 Housing Management, the day you recorded -- secretly  
19 recorded two conversations with -- one conversation with  
20 Brian Potashnik and the other conversation with  
21 Cheryl Potashnik. Which conversation was recorded first?

22 A. Brian.

23 Q. All right. Go ahead. Let's go to Brian  
24 Potashnik's, the transcript of Brian Potashnik's recorded  
25 conversation. And let me call your attention to the

1 highlighted portion on Page 1 where you say, Well, um, I was  
2 going to call you last night but, uh, I wanted to talk to  
3 you today just to, uh, follow up about, you know, our verbal  
4 agreements and so forth. Keith sent me a separation  
5 agreement last night. Then Brian says, Uh-huh.

6 Did I read that correctly? You'll stop  
7 me --

8 A. Yes.

9 Q. -- if I'm reading it, any of this, incorrectly.  
10 Is that acceptable?

11 A. Yes.

12 Q. Then going on a couple of boxes down you say, As  
13 the deals close, you know, we're -- we're going to make  
14 honor on our word, what we said and, you know, as we've  
15 talked, that we'll continue to put this in writing. Well, I  
16 get this severance agreement and it basically says I sign my  
17 life away for the 30 days and that there's, you know -- that  
18 I have nothing to stand on, you know.

19 And then Brian responds in the same  
20 conversation. He says, Well, I mean, I don't know what to  
21 say. I mean, it's -- I don't even know, other than the fact  
22 that our attorneys are requiring us that anybody that's  
23 leaving that's getting, uh, paid severance to have that  
24 signed.

25 Did you understand at the time he was

1 referring to the severance agreement that was presented to  
2 you?

3 A. Yes. And I did not agree with it, but yes.

4 Q. And that's what Cheryl told me, so I think that's  
5 what you're talking about. Uh-huh.

6 And as far as our agreement goes where we  
7 compensate you as we promised, it's going to depend on where  
8 we end up in all of this. You know, I mean, we've got Bank  
9 of America calling me right now and telling me they're ready  
10 to foreclose on Skyline because there's a \$3 million gap in  
11 the financing and the property's been performing so poorly,  
12 you know. And that's not to mention, you know, other deals  
13 that are getting resized.

14 Do you know what resized is?

15 A. Yes.

16 Q. What is it? What does resized mean? Will you  
17 explain that to the jury?

18 A. It's where the initial loan -- the amount of the  
19 loan, due to various reasons, the property did not perform  
20 up to a certain number for the permanent financing. So  
21 there had to be an adjustment made.

22 Q. Adjustment in the loan?

23 A. Adjustment in the loan, yes.

24 Q. Okay.

25 A. Due to various reasons.

1 Q. Say it again.

2 A. Due to various reasons.

3 Q. Yeah, due to various reasons.

4 And then it continues. So we don't even  
5 know where we're going to end up in terms of what we end up  
6 getting out of this, if anything, you know. I mean, I don't  
7 know how to make a commitment, you know, based on not  
8 knowing whether or not, you know, Cheryl and I are going to  
9 end up with anything other than being in bankruptcy. I  
10 mean, that's the reality. Jeff, Cascade still hasn't closed  
11 on one deal -- hasn't closed one deal. And then you say,  
12 Uh-huh.

13 Then Brian goes on to say, You know, and  
14 when they do close, who knows what the price will be. Who  
15 knows what, you know, it would be since that, um, um, things  
16 like Skyline now and Heather Bend --

17 Those are apartment complexes, correct?

18 A. Yes, sir.

19 Q. -- and Heather Bend and, you know, Aldine and all  
20 these deals that are resizing. You know, where are we going  
21 to end up? I mean, uh, it's, uh -- it's not a good  
22 situation. I mean, it's not like we're sitting here, you  
23 know, sitting on a mountain of cash. Not to mention the  
24 fact, you know, our legal fees have just -- have just been  
25 astronomical in defending ourselves and defending the

1 company. And, you know, that's the cost of doing business,  
2 Jeff.

3 I mean, there's just no -- there's just no  
4 way it can be looked at any other way, you know. I mean,  
5 you know, I didn't go and rob a bank, you know. This is  
6 something that's directly related to the business. We're  
7 trying to negotiate with them now on these, you know, Dallas  
8 deals that they think might be tainted and, I mean, it's --  
9 it's just a big mess. You say, Uh-huh.

10 And then Brian says, So, you know, if I  
11 don't know where we stand and where we're going to end up as  
12 opposed to where -- whether or not we would be bringing an  
13 indictment and, you know, Basil telling me done deal, what  
14 am I supposed to do? I mean, I don't understand. What -- what  
15 is it I'm supposed to do? And then you say, Do for me?  
16 Brian says, Yeah.

17 So then a couple lines down Brian says, I  
18 can't even pay my bills. I can't, you know -- I'm trying to  
19 stay out of bankruptcy. I have Bank of America calling me  
20 now and telling me, you know, they're ready to put the  
21 company and me and Cheryl into personal bankruptcy. I mean,  
22 what do you want me to do?

23 I mean, I'm telling you that we're -- we're  
24 going to dig ourselves out of this thing and then hopefully,  
25 you know, at the end of the day get something out of it from

1 Cascade and get the deal closed and pay the costs that we  
2 have to defend ourselves and have money left over so that we  
3 can, you know, give you a bonus. But, you know, I mean,  
4 right now nobody's asking and nobody is, you know --  
5 everybody understands the situation. You know, I -- I  
6 don't -- I don't know what else to tell you.

7 I know -- I mean, if you don't want to sign  
8 something that you think is detrimental to you in some way,  
9 then don't sign it. But I don't know what else to tell you,  
10 you know. And then you say, Uh-huh.

11 Does this sound like Brian has a handle on  
12 what the final numbers are going to be after the sale?

13 A. Not -- not a hundred percent, no.

14 Q. All right.

15 A. But I believe he had an idea.

16 Q. I'll take not at a hundred percent as an answer.

17 Then Brian says, I mean, you have Cheryl  
18 and I both committed to you that when things work themselves  
19 out there will be a bonus if there's anything there at the  
20 end of the day that we have where we can, you know, actually  
21 give out bonuses. And it has to be done, you know, on a  
22 level of trust. And, you know, it would be absolutely  
23 impossible to put anything in writing because there's so  
24 many moving parts to this.

25 Did you understand when Brian said that if



1 things work out there would be a bonus for you, and the "if"  
2 meant that if things work out there was no certain  
3 commitment when he stated that? Did you understand that  
4 when Brian said there was a condition? There was no  
5 commitment; there was a condition?

6 A. There was an agreement that we had --

7 Q. Just wasn't my question. My question is yes or  
8 no.

9 Did you understand when Brian said if  
10 things work out that he meant there was a condition  
11 precedent to your getting any money? Things had to work out  
12 first; and then if there was money at the end, he and Cheryl  
13 would take a look at it. There would have to be trust and  
14 he wouldn't put anything in writing.

15 A. But they asked me to sign the separation agreement  
16 that there wouldn't be.

17 Q. It just wasn't my question.

18 MR. L. FRIEDMAN: I object to being  
19 nonresponsive.

20 THE WITNESS: Yeah.

21 Q. (By Mr. L. Friedman) Did you understand at this  
22 point in the conversation --

23 A. Oh, I understood --

24 Q. -- they weren't going to make a commitment for any  
25 bonus and that the best they could do was give you \$150,000

1 and then wait and see if things worked out and then at their  
2 discretion decide later on to give you anymore money? Did  
3 you understand that that's what they were saying?

4 A. I understood and did not agree.

5 Q. Okay. And you didn't agree but you understood  
6 it and disagreed?

7 A. I understood what they were saying.

8 Q. And disagreed?

9 A. And disagreed.

10 Q. Okay. Let's go on.

11 Then you said, Uh-huh. And Brian said, I  
12 mean, that's the reality. And I don't -- I don't know what  
13 else to say other than, you know, it's obvious based on  
14 what's going on that that's the situation that we're in. I  
15 mean -- and, you know, it -- it s-u-c-k-s because obviously  
16 at this point we thought we'd have everything closed and we  
17 would have some money.

18 So you understood as of November 2nd, 2007,  
19 nothing was closed, there was no closing, or everything --

20 A. I'm sorry?

21 Q. I'm sorry.

22 A. I'm sorry. What date did you say?

23 Q. As of November 2nd --

24 A. Okay.

25 Q. -- 2007, when you secretly recorded these

1 conversations, you knew that everything wasn't closed?

2 A. That's correct.

3 Q. And Brian and Cheryl had no money from the  
4 closing?

5 A. Correct.

6 Q. Okay. Let's go on.

7 You say again, Uh-huh. Brian says, It just  
8 goes on and on. And then you say, Well, it certainly has  
9 definitely not been uncomplicated. And then Brian says,  
10 Well, it's beyond complicated. It's just a cluster f-u-c-k  
11 is what it is. And that's the whole problem right now. We  
12 just have no idea where this thing is going to, uh, to  
13 settle out, you know.

14 And you understood when Brian said he had  
15 no idea where this thing was going to settle out that he  
16 meant that he didn't know whether there would be any money  
17 at the end for him and Cheryl, let alone any money to  
18 distribute on a discretionary basis to any other employees?  
19 You understood that's what he was saying, even though you  
20 may disagree?

21 A. I disagree but I understand where -- I understand  
22 what he was trying to --

23 Q. Yeah.

24 A. But I disagree.

25 Q. And you understood that in this conversation you

1       secretly recorded Brian was not making any commitment to  
2       you?

3           A.     He failed other commitments, so I didn't believe  
4       it.

5           Q.     I just -- I didn't hear.

6                   He wasn't making the commitment to you,  
7       correct? You understood he wasn't making a commitment to  
8       you in this secretly recorded conversation, correct?

9           A.     If he got paid, I got paid, is what it says.

10          Q.     At his discretion.

11          A.     It didn't say that.

12          Q.     You understood that's what he -- that's what he  
13       meant?

14          A.     No.

15          Q.     All right. So this goes on.

16                   Brian says, I mean, you're going to have to  
17       talk to her about that because I don't -- I don't see how  
18       you can possibly put something like this in writing right  
19       now because the way things are, you know. I mean, why don't  
20       you explain to me how it can be done because, you know, it's  
21       an impossibility.

22                   You understood that the word  
23       "impossibility", when Brian said it, meant he could not make  
24       a commitment to you at that time? You understood it but you  
25       disagreed with it, correct?

1           A.     I understood he did not want to. He certainly  
2 could have.

3           Q.     But he wasn't going to.

4           A.     He didn't.

5           Q.     You understood he wasn't going to make a  
6 commitment to pay you anything, severance bonus or anything  
7 else in the future at the closing. I mean, there was no  
8 question when this conversation finished you didn't have a  
9 commitment from Brian Potashnik.

10          A.     Not necessarily. I don't necessarily agree with  
11 that.

12          Q.     You're telling this jury that after this  
13 conversation you still thought you had a commitment from  
14 Brian Potashnik?

15          A.     Sir, I had --

16          Q.     It's just a yes-or-no question.

17          A.     I disagree.

18          Q.     You disagree that it's yes or no?

19          A.     I disagree with how it's being phrased, and yes.

20          Q.     So Brian then goes on to say, I mean, talk to  
21 Sara. And at this point that's the best we can do. I mean,  
22 there's not going to be anything else because there's no way  
23 of being able to memorialize anything that's in that, you  
24 know.

25                         So at least at this point you understood

1 that there was never going to be anything in writing in the  
2 form of a commitment to pay you anymore money, correct?

3 A. That's what he's implying.

4 Q. No. You understood from the words Brian used in  
5 the conversation that you secretly recorded that he was  
6 never going to put anything in writing to commitment himself  
7 and Cheryl to pay you anymore money as of November 2nd,  
8 2007. You understood that?

9 A. In that particular sentence, yes.

10 Q. Yeah, but you under -- not only from that  
11 sentence. You understood it from the whole conversation.

12 A. There's other parts of the conversation and also  
13 in Cheryl's that says the discussion will continue and we  
14 will try to memorialize. Yes, there is.

15 Q. So what you're saying to the jury is you left this  
16 conversation with the impression that Brian Potashnik was  
17 still committed to pay you severance or a bonus at the  
18 closing of the Cascade transaction?

19 A. I felt he was legally obligated and --

20 Q. That wasn't my question. My question was, Did  
21 Brian -- Brian Potashnik didn't make it clear to you that he  
22 was never going to put anything in writing to commit to pay  
23 you anymore money in this conversation?

24 A. He didn't, no.

25 Q. Okay.

1 A. He did not.

2 Q. Then you say, Maybe it's just memorializing what  
3 you just said. And Brian says, How do you memorialize when  
4 someone says trust me? You say, Brian, you told me, what, a  
5 dozen times we're going to have it memorialized. And Brian  
6 says, With what?

7 Now your answer to that was, What's that?  
8 And then Brian says, What? Memorialize what? You say,  
9 The -- the bonus structure, the current --

10 And Brian says, The bonus structure. You  
11 say, The bonus structure. And then Brian says, Of what?

12 Now, Mr. Carpenter, wasn't this an  
13 opportune time when Brian says "of what" for you to say,  
14 Brian, you know we had a deal as of October 16th, 2006,  
15 where you promised to pay me? We have a valid, enforceable,  
16 oral agreement where you promised to pay me any one of the  
17 combination of -- of alleged oral agreements that you'd  
18 testified about during this trial.

19 Wasn't that a perfect opportunity for you  
20 to say to Brian Potashnik, Brian, you promised to pay me a,  
21 b, c, d, and e, right?

22 A. It would have been time to reemphasize that.

23 Q. Right, but you didn't do it.

24 A. I didn't do it, but there was a clear  
25 understanding --

1 Q. I'll take "I didn't do it".

2 A. -- what we were talking about.

3 Q. I'll take "I didn't do it".

4 And then Brian says the bonus structure.

5 And you said, yeah, the bonus structure. And then Brian  
6 says, Of what? And you didn't say anything.

7 Brian's asked you. He said, Of what? What  
8 are you talking about? Wasn't that another opportunity for  
9 you to say, yeah, Brian, you know, the deal we made? We  
10 hugged, we bumped, we man bumped.

11 Wasn't that an opportunity for you to say,  
12 Come on, Brian, you know the deal we made? But you didn't  
13 do it, did you?

14 A. Not at that point in that conversation, no.

15 Q. So Brian goes on to say, We -- we don't know where  
16 this thing is going to end up. I -- that's what I'm  
17 going -- that's what I'm trying to explain to you. We don't  
18 know if there's going to be any money to bonus. I mean, we  
19 are completely under water right now. How can I make a  
20 commitment on a bonus when I can't even pay the bills?

21 I mean, I've got Bank of America forcing me  
22 into bankruptcy over Skyline. That's just one deal, you  
23 know. And I'm stuck in litigation with NAPICO, you know.  
24 You've got all these other deals, you know, Aldine Bender  
25 and, you know, all the tax issues that relate to the



1 exemptions on these deals. All the, you know,  
2 b-u-l-l-s-h-i-t with Charter Mac and now they're, you know,  
3 harping about, you know, we don't have any money to resize  
4 Heather Bend, you know.

5 I mean, at the end of the day, you know, we  
6 may be in a position where we have to file bankruptcy. And  
7 the only thing that we're going to have to hold onto, if we  
8 can even hold onto it, is our house. Which, we would  
9 probably need to figure out a way to sell it or do something  
10 just to pay lawyers to keep our freedom. So how do you  
11 memorialize what there is to memorialize? And your response  
12 is, Uh-huh.

13 A. I listened.

14 Q. That was another opportunity for you to say but,  
15 Brian, we had a deal. Wasn't it?

16 A. Brian knew we had a deal.

17 Q. No, that wasn't my question. My question was that  
18 was another opportunity for you to say but, Brian, you  
19 remember on October 16th, 2006 --

20 A. I did not -- I did not clearly state that.

21 Q. And you didn't say it.

22 And, Mr. Carpenter, you were the only one  
23 who knew this conversation was being recorded, correct?

24 A. That's true.

25 Q. You were the only one who knew you were making a

1 record that was likely to turn up in a court somewhere down  
2 the road. And this was your opportunity to get it on the  
3 record, but you didn't do it.

4 A. I wanted to know why they lied to me about the  
5 separation agreement.

6 Q. You didn't ask that either, did you? You didn't  
7 ask that question, did you?

8 A. I believe I did.

9 Q. Well, you show me where you asked it. But you  
10 never asked Brian to confirm --

11 A. The next sentence, sir.

12 Q. There's no question.

13 You never asked Brian to confirm this  
14 so-called oral agreement that you allege you made on October  
15 16th, 2006, did you? You didn't in this conversation?

16 A. During this conversation --

17 Q. All right. So Brian says --

18 A. -- implies --

19 Q. -- well, I guess, you know -- okay, Brian says, I  
20 mean, we're trying to dig ourselves out of this thing for  
21 everybody's benefit. But we're so upside down right now and  
22 there's so many issues outstanding that we need to get  
23 cleared up before we know where we stand; that there's no  
24 way that you can put anything like that in writing. It's  
25 impossible. If we could, we would, but we can't.

1                   Then you say, But on the separation  
2 agreement I'm supposed to waive everything? Brian says,  
3 I -- I don't know -- I don't even remember that -- I don't  
4 even know what it is. I mean, it's a...

5                   And then you say, Well, I didn't either  
6 until last night.

7                   So neither one of you know what you're  
8 talking about at this point?

9           A.     Not true.

10          Q.     Okay. It says what it says, right?

11                  Then Brian says, Well, I guess, you know,  
12 Cheryl's been advised that, you know, when employees leave,  
13 if they're getting something, you know, if they're getting  
14 any severance, that it's something that they need to sign in  
15 order to get it. Okay? It's a legal issue, you know. And  
16 it's been told to her by the lawyers that, you know, if  
17 someone's leaving the company and they're getting a  
18 severance that they need to sign it and it's typical. And  
19 if not -- and if it's not, you know, I don't know what else  
20 to say.

21                  So you say, All right.

22                  All right. Okay. I agree. You say, All  
23 right. Then Brian says --

24          A.     I understood what he said. I didn't agree with  
25 him.

1 Q. I'm sorry. Say it again.

2 A. I said I understood what he said. I did not agree  
3 with it.

4 Q. Okay. So all right doesn't mean I agree. It just  
5 means --

6 A. It was just something like, yeah, right, just like  
7 I said.

8 Q. It wasn't yeah, right. It was all right.

9 A. Same -- same thing.

10 Q. Okay, same thing.

11 A. It was acknowledgement of the BS.

12 Q. It's like stay bonus means severance, right?

13 A. Yes.

14 Q. Pay to stay means severance?

15 A. Pay to stay meant severance or retention.

16 Q. Right.

17 And, by the way, nowhere in this secretly  
18 recorded conversation, when you were the only one who knew  
19 it was being recorded, did you use the term "pay to stay",  
20 correct?

21 A. I may not. I don't recall.

22 Q. And nowhere in this conversation on November 2nd,  
23 2007, did you use the term "stay bonus", correct?

24 A. When?

25 Q. On November 2nd, 2007, the last day you were paid

1 by Southwest Housing Management, you didn't use either term,  
2 "stay bonus" or "pay to stay", correct?

3 A. No. I used our agreement.

4 Q. Because stay bonus and pay to stay were terms that  
5 you made up during the course of this litigation --

6 A. Not true.

7 Q. -- to make it sound better.

8 A. Not true. Pay stay bonuses is very well published  
9 in --

10 Q. In where?

11 A. You can Google it. You can look it up.

12 Q. No, I want to know where it's well published.  
13 Name me one publication.

14 A. Google it. There's an article that says  
15 pay-and-stay bonuses.

16 Q. One publication that you can name --

17 A. Entrepreneurial magazine.

18 Q. All right, Entrepreneur magazine. I'm going to  
19 look at that.

20 A. And I believe that's a short article that can be  
21 understood.

22 Q. Okay. We'll go look.

23 Then Brian says, You know? I mean, let's  
24 see if we can turn some of this s-h-i-t around and make --

25 MR. POTASHNIK: I'm sorry.

1 Q. (By Mr. L. Friedman) -- and make --

2 MR. L. FRIEDMAN: Clean it up, man.

3 Q. (By Mr. L. Friedman) -- and make some of these  
4 things go away so that, you know --

5 MR. L. FRIEDMAN: Stop saying you know.

6 MR. POTASHNIK: I know.

7 Q. (By Mr. L. Friedman) -- we can take care of  
8 Jeff Carpenter. All right?

9 And then you said speechless. Or maybe you  
10 were speechless. I don't know.

11 A. Correct.

12 Q. Then Brian says, Wow. All I can say is, is that  
13 we're doing our best to try to dig ourselves out of this.  
14 And until I get some clarity as to where we stand and the  
15 fact that we're not going to get in a position of having to  
16 bankrupt the company and ourselves personally and lose  
17 everything, we'll be in a better position to, you and I,  
18 have discussions about bonuses. But right now, you know,  
19 I -- it's not something that we can do if we had the money.

20 Is there anything about that last  
21 sentence --

22 MR. L. FRIEDMAN: Go back, please,  
23 Mr. Page.

24 Q. (By Mr. L. Friedman) Is there anything about that  
25 last statement by Brian Potashnik that you weren't clear

1 about? See where it says, "I mean"?

2 MR. L. FRIEDMAN: Yeah, right there.

3 Q. (By Mr. L. Friedman) Anything about that?

4 A. I'm sorry. I don't know where you're looking at.

5 Q. I don't think that was the last sentence.

6 MR. L. FRIEDMAN: More on the bottom. Next  
7 page. "I mean". See where it says, "I mean"?

8 Q. (By Mr. L. Friedman) Yeah. It's impossible. If  
9 we could, we would, but we can't.

10 All right, let's move on to the next one.

11 A. That wasn't what we were just looking at.

12 Q. I don't think that was the last one.

13 A. That wasn't what we were just looking at. It's  
14 the BP there.

15 Q. Which one?

16 A. One of them. I can't see it that far.

17 MR. L. FRIEDMAN: You just get confused by  
18 all the dirty words?

19 Q. (By Mr. L. Friedman) So Mr. Potashnik says, But  
20 right now, you know, it's not something that we can do.  
21 It's just not something that we can do if we had the money.

22 All right. And then you said, Well, I --  
23 you know, I certainly understand.

24 You understood. You agreed with him.

25 A. I understood the money -- the challenges in the

1 money situation at that time.

2 Q. Yeah, but what you didn't say was, Brian, that's  
3 not acceptable. I want you -- I am holding you to this  
4 so-called, alleged, oral agreement we made on October 16th,  
5 2006, and I want you to confirm our agreement. You didn't  
6 say that, did you?

7 A. No, I didn't.

8 Q. You didn't say you owe me -- we had a -- you  
9 didn't say we had a second oral agreement as to unpaid  
10 bonuses. Remember you testified about that yesterday?

11 A. Yes, sir.

12 Q. You didn't say that either. You didn't say you  
13 owe me unpaid bonuses.

14 A. That's what the topic was about.

15 Q. Okay. When was that second oral agreement about  
16 unpaid bonuses? Remember you testified about that  
17 yesterday?

18 A. Yes. It was after the March 14th and Aprilish  
19 time frame, I believe.

20 Q. Remember you testified yesterday that the bonuses  
21 you were seeking were not pursuant to --

22 MR. L. FRIEDMAN: Did I have a black one?

23 Q. (By Mr. L. Friedman) -- were not pursuant to your  
24 employment contract but they were pursuant to a separate  
25 alleged -- second oral agreement you had with Mr. Potashnik?



1 You remember that?

2 A. Yes, sir.

3 Q. Okay, so second oral agreement. And what do you  
4 call these bonuses that the second oral agreement is about?

5 A. Earned, unpaid, annual bonuses.

6 Q. Earned, unpaid, annual bonuses. And not for 2004  
7 to 2005, correct?

8 A. Correct.

9 Q. So we're just talking about 2005 to '6, right?

10 A. Yes.

11 Q. 2006 to '7?

12 A. Yes.

13 Q. And 10 months of 2007?

14 A. At -- at that point we --

15 Q. No, you cut off in March. So it would be April,  
16 May, June, July, August, September, October, November.  
17 Eight months in 2007?

18 A. Right.

19 Q. Okay. So tell me the date of this alleged oral  
20 agreement.

21 A. Prior to -- it was during the period of March,  
22 April time frame.

23 Q. What year is that?

24 A. Of '07.

25 Q. Do you remember the exact date? Without looking

1 at the script, do you remember the exact date?

2 A. I don't have it.

3 Q. What happened to that script?

4 A. What's that?

5 Q. What happened to the script?

6 A. It's here but I'm not looking at it.

7 Q. Okay.

8 March, April '07 --

9 A. On the March 13th notes, Brian -- from Brian's  
10 mouth --

11 Q. No, my only question is, Do you remember the date  
12 that you allegedly made this alleged second oral agreement  
13 about the earned, unpaid, annual bonuses?

14 A. Prior to March 14th.

15 Q. Can I cross out April?

16 A. Yes.

17 Q. And I'm going to put prior. That little mark  
18 means prior. Okay.

19 A. That's fine.

20 Q. You good with it?

21 Prior to March 14th. But you don't  
22 remember the date?

23 A. It was from discussions prior to March 14th  
24 because it was included in the March 14th notice.

25 Q. Okay.

1 Do you remember who you made the oral  
2 agreement with?

3 A. Brian Potashnik.

4 Q. Okay. Do you remember where you made it?

5 A. That particular discussion --

6 Q. Was it one place or ten places or one discussion  
7 or ninety discussions?

8 A. It was previous discussions but it was one  
9 discussion where it was laid out, and it was actually during  
10 a drive while we were -- Brian was venting or needed to get  
11 out of the office and we took a drive together.

12 Q. And you drove from where to where? From where to  
13 where?

14 A. We drove by one or two of the properties and we --  
15 Brian stopped to get a pack of cigarettes.

16 Q. Okay. Drove from the office to which property,  
17 sir?

18 A. Let's see. I think we went by -- it was out west.  
19 I think we went by Ash Creek, I believe. I'm not a hundred  
20 percent sure.

21 Q. Anywhere else?

22 A. I believe possibly Scyene.

23 Q. I'm sorry. Say the next one.

24 A. Scyene.

25 Q. You have to spell that for me.

1 A. S-y-c-e-n --

2 Q. S-y.

3 A. c-e-n-e.

4 Q. c-e?

5 A. c.

6 Q. e.

7 A. e-n-e.

8 Q. n-e.

9 Anywhere else?

10 A. Possibly, but those are the two that I recall.

11 Q. The third one?

12 A. As I mentioned, I'm not sure. Those two I recall.

13 Q. Okay. Maybe a third?

14 A. Possibly.

15 Q. Your car or Brian's car?

16 A. Brian's Suburban.

17 Q. Okay.

18 And what are the words that Brian used that  
19 you believe indicated his consent to any bonuses?

20 A. That we -- that we owe you earned -- we owe you  
21 bonuses. You've earned them. We can pay your bone -- some  
22 bonus monies as developer fees come in as well as monies  
23 from the land sale in McKinney, the sale of Fairway, and  
24 also from Las Vegas.

25 Q. And how much money did Brian agree to in that car

1 ride?

2 A. Four hundred thousand dollars. And that's what I  
3 used as a claim.

4 Q. 400,000?

5 A. Yes.

6 Q. Okay.

7 A. Less than what I proposed.

8 Q. Four hundred thousand agreed, and you said yes?

9 A. Yes.

10 Q. Oral agreement, correct?

11 A. Is that a question?

12 Q. Yeah. Was it an --

13 A. Yes.

14 Q. -- oral agreement?

15 A. Yes.

16 Q. Never written down, never signed by you and Brian?

17 A. Correct.

18 Q. And it was clear to you at that time, right?

19 A. Yes.

20 Probably 95 percent of all discussions were  
21 oral.

22 Q. I'm sorry. Say it again.

23 A. I said probably 95 percent of all of our  
24 discussions, if not 98 percent of all of our discussions,  
25 were in an oral fashion.

1 Q. The discussions were orally. Can I write that  
2 down?

3 A. As well as agreement.

4 Q. Mr. Carpenter, from the time you made this alleged  
5 second oral agreement, which is before March 14, 2007, for  
6 \$400,000 -- 2007, right?

7 A. Yes.

8 Q. -- did you ever ask or request in this legal  
9 proceeding more than \$400,000 in bonuses?

10 A. In -- yes, in my --

11 Q. I'll accept a yes.

12 A. Yes.

13 Q. Isn't it true, sir, that after you claim you made  
14 this alleged oral agreement -- and by oral agreement you  
15 mean meeting of the minds, correct?

16 A. Yes.

17 Q. You were clear that you asked for \$400,000 in  
18 earned, unpaid, annual bonus and you were clear that  
19 Brian Potashnik said, yes, I agree to pay you 400,000 annual  
20 bonus?

21 A. Yes.

22 Q. And even though you were clear that you had a  
23 solid agreement for \$400,000 annual bonus, after March 14th  
24 or after -- before March 14th, 2007, you made claim in this  
25 case for more than \$400,000; isn't that correct?

1 A. Yes. As time extended, yes.

2 Q. How much more did you claim for in this lawsuit  
3 based on this oral agreement?

4 A. Well, I never actually claimed. I suggested for  
5 discussion 600,000.

6 Q. Okay. Here's my question. You testified  
7 yesterday you had no contract claim, right? Do remember  
8 that testimony?

9 (No verbal response)

10 You testified yesterday you had no claim  
11 for bonuses under your employment agreement. You confirmed  
12 that 30 minutes ago. Do you remember that testimony?

13 A. Yes.

14 Q. Okay. You testified yesterday and just confirmed  
15 it that the basis of your claim for a bonus is this second  
16 oral agreement, right?

17 A. Yes.

18 Q. So you're trying to recover \$400,000 that you  
19 claim was agreed to, correct?

20 A. Yes.

21 Q. That doesn't include the bonus for 2004, 2005,  
22 which we've now uncovered that you've been paid for.

23 A. Right.

24 Q. But you originally claimed the \$50,000 bonus for  
25 2004, 2005, in this lawsuit?

1 A. I'm sorry. Repeat that.

2 Q. When you filed this lawsuit in 2008, you were  
3 claiming the \$50,000 alleged bonus for the 2004, 2005.

4 A. But we cleared up that --

5 Q. No, I cleared it up. I cleared it up.

6 A. We cleared it up.

7 MS. GIBSON: Object to arguing with the  
8 witness.

9 THE COURT: Sustained.

10 THE WITNESS: That was the bonus.

11 Q. (By Mr. L. Friedman) Okay. So you're not claiming  
12 the \$50,000 anymore?

13 A. That's what we decided on previously, yes.

14 Q. So now -- now we're looking at the rest of it, and  
15 it's based on this \$400,000 agreement.

16 A. However, as of March, I stay through November.  
17 There is that gap.

18 Q. Sir --

19 A. But as of March that was the --

20 Q. Okay. So you added \$200,000 for the next eight  
21 months?

22 A. No. I --

23 Q. Go ahead.

24 A. As I said previously, I submitted a proposal to  
25 sit down to discuss performance, to discuss unpaid bonuses,



1 as well as any increase in salary. And I gave a sheet and I  
 2 was using \$200,000. Actually, I was using 80 percent of  
 3 \$200,000, as well as 200,000.

4 Q. Sir, in this lawsuit you have claimed various  
 5 numbers as an earned, unpaid, annual bonus. Isn't that  
 6 true?

7 A. Yes. I tried to renege -- or basically was  
 8 renegotiating.

9 Q. Yeah. You tried to --

10 A. Since there was --

11 Q. -- renegotiate.

12 A. -- since my time was greatly expended.

13 Q. Yeah.

14 And you've claimed 650,000 at one point,  
 15 correct?

16 A. I don't believe so.

17 Q. You claimed 600,000 at one point, correct?

18 A. I believe so.

19 Q. What other numbers have you claimed in this  
 20 lawsuit for these unearned, unpaid, annual bonus?

21 A. I don't have that calculation --

22 Q. But you've claimed other numbers?

23 A. -- from -- it would be less than that.

24 Q. Okay. Can I put down other numbers?

25 A. Less than that.

1 Q. Okay, other numbers less?

2 A. Less, yes.

3 Q. Other amounts less, correct?

4 A. Yes.

5 Q. Less than 600-. Okay.

6 Let's go back to finish this. After you  
7 said I certainly understand, Brian says, you know, it's not  
8 like we don't want to do it.

9 A. My apologies. Where are we?

10 Q. I'm sorry. Right here on the bottom.

11 I stole Mr. Page's pointer last night. I  
12 realized it when I got home.

13 A. Okay.

14 Q. It says, You know, it's not like we don't want to  
15 do it. And even if we did want to do it, we don't have it.  
16 Secondly, you know, this is not a situation that anybody's  
17 ever expected would happen or that we would -- that we would  
18 be in right now. And you're just going to have to, you  
19 know, trust us that when or if things get to the point where  
20 they turn out positive for us that, you know, at that point  
21 in time we'll bonus out based on, you know, I don't know,  
22 whatever, whatever's left over. I don't know what that is,  
23 you know, not with what's going on right now.

24 You knew from that comment again that  
25 Brian Potashnik was not going to commit to pay you any money

1 other than the six weeks' severance that you were paid  
2 pursuant to your employment agreement, correct?

3 A. He was breaching our oral agreement.

4 MR. L. FRIEDMAN: I'm going to object to  
5 that as being unresponsive.

6 THE COURT: Answer only the question  
7 Mr. Friedman's asking.

8 Q. (By Mr. L. Friedman) Yeah, based on  
9 Mr. Potashnik's statement in this secretly recorded  
10 telephone conversation, you knew he wasn't going to make a  
11 commitment to pay you anymore money than the six weeks you  
12 were supposed to be paid pursuant to your employment  
13 agreement with Southwest Housing Management, correct?

14 A. At that time.

15 Q. And the \$150,000 severance that you were offered,  
16 correct?

17 A. That came later. This was November 2nd.

18 Q. Okay, at that time. Let's move on.

19 A. At that particular time.

20 Q. Anything else on this transcript that -- then  
21 after another um, you [sic] say, A few weeks ago you came  
22 here and told me that you would take -- this is Brian -- A  
23 few weeks ago, you came here and told me that you've taken  
24 another job.

25 This is November 2nd, 2007.

1                   Okay. That you were going to work for a  
2 American Housing. Okay. And at that point in time I told  
3 you that whether you went to work for them or not or whoever  
4 it was that you went to work for that if things out tracked,  
5 if things turned out where we end up with something, okay.  
6 But it's not a good situation right now and it's not a  
7 situation where it can even be put in writing. I mean, it's  
8 impossible, you know.

9                   Mr. Carpenter, when you told Brian  
10 Potashnik prior to the time you were terminated by  
11 American -- by Southwest Housing Management -- when you told  
12 Brian Potashnik that you had been offered a job by American  
13 Housing, Brian Potashnik told you to take the job, didn't  
14 he?

15               A. Yes, he did, on October 12th.

16               Q. On October 12th, 2007, before the management  
17 transition on October 31st, before any closing, you told  
18 Brian Potashnik that you had another job with American  
19 Housing. And he said take the job, correct?

20               A. Correct.

21               Q. So if you were so essential to the closing of the  
22 transaction and if you were so essential to the transition  
23 of management and this deal couldn't get done without your  
24 presence, why would Mr. Potashnik say take the job?

25               A. Because I pretty much had -- had resolved and

1 taken care of most of the duties that needed to be done.  
2 And Brian was not into the details; Cheryl was. And I spoke  
3 with Cheryl and Cheryl asked me to stay through until the  
4 transition.

5 Q. Till the management transition?

6 A. Till the management transition, based on the  
7 consulting asset management agreement with Pinnacle, which  
8 began --

9 Q. Well, she asked you --

10 A. -- on November 1st.

11 Q. -- she asked you to stay another two weeks?

12 A. Yes.

13 Q. Now, when you say management transition, let's  
14 make that clear. On October 31st, 2007, what you say is a  
15 management transition was simply the signing of a management  
16 transition agreement; isn't that true?

17 A. No, sir. That was -- that was the time that all  
18 of the Southwest Housing corporate employees and perhaps the  
19 site employees -- I don't recall -- were converting to  
20 Pinnacle, leaving Southwest Housing company and becoming  
21 employees or at least under the direction of Pinnacle  
22 management.

23 Q. The truth of the matter is, Mr. Carpenter, on  
24 October 31st, 2007, number one, there was no mass exodus?

25 A. Thank you.

1 Q. Correct?

2 A. Yes.

3 Q. Number two, there was no change in management.

4 All the employees that had been at Southwest Housing stayed  
5 at Southwest Housing.

6 A. The stay-and-pay bonus program worked, yes.

7 Q. The stay-and-pay program that you conjured up four  
8 years later worked?

9 A. No. That you discussed with Brian the day that --

10 Q. Okay, good.

11 A. -- that I tried to renegotiate a five percent.

12 Q. No new employees showed up for work on November  
13 1st?

14 A. Not for Southwest Housing.

15 Q. Your presence wasn't essential on November 1st or  
16 October 1st or September 1st; isn't that true?

17 A. I would call that BS. No, sir.

18 Q. Okay.

19 Okay. Let's go on. Conversation, now  
20 we're up to Cheryl. Do you remember secretly recording a  
21 conversation with Cheryl?

22 A. Yes.

23 Q. And you did that because, obviously, you didn't  
24 get what you wanted from your secretly recorded conversation  
25 with Brian?

1 A. No, sir.

2 Q. Right?

3 A. No, sir.

4 Q. Well, Mr. Carpenter, if you had gotten everything  
5 you wanted from your secretly recorded conversation with  
6 Brian, you wouldn't have needed to secretly record a  
7 conversation with Cheryl; isn't that correct?

8 A. Perhaps, Michael --

9 Q. Mr. Carpenter, just my questions.

10 A. I can't answer that.

11 Q. All right. So you say -- okay, you say, You  
12 ready? Forty-nine today.

13 See it?

14 A. Yes.

15 Q. And then Cheryl says, You are? And you say, Yep.  
16 Cheryl says, Happy birthday.

17 And then you say, Well, it says here  
18 it waives all those rights. And Cheryl says, Well, Jeff,  
19 you don't currently have any rights.

20 Now, at that time you were referring to the  
21 severance agreement that was delivered to you by Southwest  
22 Housing Management, correct?

23 A. Yes.

24 Q. And that was the one you refused to sign?

25 A. Yes.

1 Q. Cheryl says, Well, Jeff, you don't have any  
2 rights. And, Jeff, you said, Okay. Cheryl says, You don't  
3 have any rights. You confirmed that again. You said, Okay.

4 Am I reading that wrong?

5 A. Only an admission that I hear what she's saying,  
6 not that I agree with it.

7 Q. Did I misread that?

8 A. Just what I said. No, you didn't misread it, but  
9 okay doesn't mean that I'm agreeing with it. It just means  
10 I heard her.

11 Q. But okay means okay. You'll acknowledge that?

12 A. No. Okay means that I heard what she said.

13 Q. Okay, but that's not what you said. You just said  
14 okay.

15 A. I heard what she said and acknowledged that I  
16 heard what she said.

17 Q. Okay. But you'll admit that's not what you said.

18 A. I wasn't looking for an argument.

19 Q. But you were the only one who knew this was a  
20 secret recording?

21 A. Yes.

22 Q. So you could have said what you're thinking or  
23 what you meant or even said something to set up  
24 Mrs. Potashnik, which you were trying to do, right?

25 A. No, I wasn't trying to do that nor was that -- nor



1 was that ever my intention.

2 Q. You were trying to set her up. That's why you  
3 secretly recorded the conversation.

4 A. I wanted to know why, with the two oral agreements  
5 and even the written agreement and the promises that were  
6 given, why I was sent a separation agreement that nullified  
7 all of that.

8 Q. But you never asked that --

9 A. And --

10 Q. You never asked that question.

11 A. I did prior -- I did prior to this conversation.

12 Q. You just -- you just forgot to record that  
13 conversation.

14 A. I was listening more than talking. I was -- I was  
15 hurt, I was angry --

16 Q. All this is nonresponsive.

17 A. -- I was betrayed.

18 Q. All this is nonresponsive.

19 So let me get it straight. You had already  
20 asked the question and knew the answer to the question you  
21 wanted to know the answer to, but then you secretly recorded  
22 Mrs. Potashnik so you could get the answer again on tape,  
23 correct? Yes or no?

24 A. No.

25 Q. You just said you'd already asked the question and

1       gotten the answer. Do you want to change that testimony?

2           A. I wanted to know why I was getting the  
3       separation --

4           Q. The only question is, Do you want to change that  
5       testimony?

6           A. Which -- I'm sorry. What testimony?

7           Q. You just said --

8                   THE COURT: (Inaudible).

9                   MR. L. FRIEDMAN: Pardon me?

10                  THE COURT: You're going in a circle. You  
11       have to keep on going.

12                  MR. L. FRIEDMAN: I'm trying to get a  
13       straight answer.

14           Q. (By Mr. L. Friedman) All right, let's move on.

15                   You said, Okay. You don't have any rights.  
16       You said okay again.

17                  MR. L. FRIEDMAN: Let's move this -- can we  
18       move this higher, Steve?

19           Q. (By Mr. L. Friedman) You have conversations that  
20       we've had, says Cheryl. You have intentions that we've had.  
21       You have what we intend to do and what we want to do. You  
22       don't have any rights. That's about your employment and the  
23       rights that you had under your employment agreement and that  
24       type of thing.

25                   You understood she was referring to the

1 severance agreement, correct?

2 A. Yes.

3 Q. Then it says -- Ms. Potashnik says, It's a legal  
4 document. It's not saying, Jeff, you give up any hope of  
5 ever getting anything. It's a legal document. It's what  
6 you have rights to. And if you think you have other rights,  
7 then you shouldn't sign the document.

8 Okay? So --

9 A. No, sir, if you're asking a question.

10 Q. Well, no. My question is you understood that  
11 Ms. Potashnik said you have legal rights under your  
12 employment agreement and legal rights under the severance  
13 agreement, and after that it was up to the discretion of the  
14 Potashniks as to whether or not you would ever get anymore  
15 money.

16 A. Those documents differed from the oral agreements  
17 I had and took away my rights.

18 Q. The document, the severance agreement that you  
19 were handed, differed from discussions you had with the  
20 Potashniks and, as you say, negotiations you've had with the  
21 Potashniks, right? Right?

22 A. Early on in negotiation, yes.

23 Q. Yeah, 'cause you continued to negotiate with the  
24 Potashniks. You were always negotiating with the  
25 Potashniks, right?

1           A.     Does not change the oral agreement.

2           Q.     But you were always negotiating with the  
3 Potashni ks?

4           A.     No. They were always putting me off in time for  
5 me to do the job that they asked me to do. And I had  
6 completed the job and now they're telling me that thank  
7 you --

8           Q.     I'm going to object to all that as being  
9 nonresponsive. Your lawyer will get a chance to ask about  
10 all this.

11                     You continued to negotiate and have  
12 discussions about this subject matter with the Potashni ks  
13 about the bonus, about the three-percent bonus, about the  
14 earned -- unearned, employment-agreement bonus. You kept  
15 discussing it and renegotiating it with the Potashni ks.

16           A.     We discussed it.

17           Q.     Thank you.

18                     Then you say, yeah, it does -- let's go on  
19 Page 2.

20                     Then after an uh-huh, Cheryl says, Uh, and  
21 we can go through that. We can definitely do that but, you  
22 know, what my proposal to you today was going to be is that  
23 what I can build into that agreement for you after the --  
24 and your transcriber couldn't pick that word up -- of your  
25 employment so you have something to have as, um, an

1 agreement to pay in addition to the 20-, the one-month  
2 severance, and your PTO, paid time off bank, and all that  
3 stuff. You say, Uh-huh. To pay three years of bonus, the  
4 minimum bonus, even though I -- I'm not having to.

5 I'm not -- I'm not saying that there was a  
6 minimum bonus, but the original employment agreement talked  
7 about \$50,000. So to build into your agreement -- uh-huh --  
8 the leader of the sale employment at the end of the year and  
9 you would be guaranteed 150,000 pursuant to that agreement.  
10 And you say, Uh-huh.

11 You understood Ms. Potashnik was offering  
12 you \$150,000 severance at that time, correct?

13 A. In lieu of our other agreement.

14 Q. Didn't say that. You understood she was offering  
15 you \$150,000 at that time?

16 A. And that's it.

17 Q. Correct?

18 A. And that was it.

19 Q. And then you say, Uh-huh. And then she says, And  
20 then there's something you would have a legal right to have.

21 Meaning the 150,000, correct?

22 A. I believe so.

23 Q. And she says, And then, you know, like I've told  
24 you before when we were on the phone with Keith --

25 Meaning Keith Jones, correct?

1 A. Yes.

2 Q. The man you called to testify here, correct?

3 A. Yes.

4 Q. -- I've got to be able to see some preliminary on  
5 how this deal is going to shake out before I can start  
6 making commitments and go above and beyond that because I  
7 need to make sure that when all is said and done and  
8 it shakes out and everybody else gets paid, that Brian and I  
9 have money, a certain amount of money that we can put  
10 towards our defense.

11 So let's stop there for a minute.

12 So, first of all, after Ms. Potashnik was  
13 willing or offered to guarantee you \$150,000 in your  
14 severance agreement, that wasn't it. She said, And then you  
15 might get more. Isn't that what she was saying here?

16 A. That's not what the -- she --

17 Q. Isn't --

18 A. Provided by the written document agreement. I  
19 don't believe she believed in oral agreements at that time.  
20 I'm not sure. However --

21 Q. Sir, sir --

22 A. -- they were trying to get me to settle for  
23 \$150,000.

24 Q. Sir, all I'm saying is, isn't what she's saying  
25 here let me see how this shakes out and then you can get

1 more? The door wasn't closed by Mrs. Potashnik, correct?

2 A. Nor was it closed by Brian.

3 Q. Okay.

4 Then you said, Right.

5 MR. L. FRIEDMAN: Next. Let's go next.

6 Q. (By Mr. L. Friedman) Cheryl says, And until I know  
7 that I have that, I'm not making anymore commitments.

8 So understood by the time of this  
9 conversation November 2nd, 2007, that both Brian and Cheryl  
10 were not going to make any commitments beyond the \$150,000  
11 that they had offered you, correct?

12 A. We have already had a commitment prior to.

13 Q. Sir, my only question is that it was clear to you  
14 from both of the conversations you secretly recorded neither  
15 Brian or Cheryl was not going to make anymore commitments  
16 other than the living up to the terms of the employment  
17 agreement and then offering you \$150,000 severance. That  
18 was clear to you on November 2nd, 2007?

19 A. Yes.

20 Q. Then Cheryl -- then you said, Right. And then  
21 Cheryl said, But you have to understand there's investment  
22 banker fees, there's transfer fees on the debt, there's  
23 legal fees, there's resized escrow costs, you know, Skyline  
24 alone, Bank of America asking for 3 million. Phamer --

25 Is that Phamer?

1 A. Parmer.

2 MS. POTASHNIK: It should be Parmer.

3 Q. (By Mr. L. Friedman) Palmer. Parmer or Palmer, a  
4 big part of the million dollars when we close. You then  
5 say --

6 MR. L. FRIEDMAN: Let's go to the next one.

7 Q. (By Mr. L. Friedman) You say, Uh-huh.

8 And then in the next conversation Cheryl  
9 says, And the last thing I want to do is make you  
10 commitments that can't be kept because then you and I are  
11 going to get sideways, and I don't want do that. I don't  
12 want -- "(inaudible)". But if your intention is to do that,  
13 let's do that now. Then, you know, we should just stop  
14 talking and you should do it. But I really want to work  
15 with you and make sure you're taken care of, but it's not  
16 going to be -- there's no point in making promises I can't  
17 keep and then we end up sideways with each other.

18 When Ms. Potashnik said that, you  
19 understood she wasn't going to make you a commitment to pay  
20 you anything more than the 150-, correct?

21 A. Yes.

22 Q. You understand that she wanted to see how the  
23 money shook out at the -- when the deal closed?

24 A. Yes.

25 Q. And you wanted -- and you knew that she wanted to



1 I leave the door open to pay you more money on the  
2 discretionary basis when the deal closed?

3 A. So they say.

4 Q. And that want wasn't acceptable to you?

5 A. Well, considering I've been lied to many times --

6 Q. And you lied to them.

7 A. No, sir.

8 Q. And you lied to them.

9 A. No, sir.

10 Q. So my only question is that wasn't acceptable to  
11 you?

12 A. It was not acceptable.

13 Q. Okay.

14 So then you say, Yeah, yeah, I understand.  
15 Just the way this reads doesn't cover it.

16 Meaning the severance agreement, right?

17 A. Right.

18 Q. Cheryl says, That -- that doesn't cover anything  
19 having to do with the sale because you don't have any rights  
20 under the sale. You have rights under your employment  
21 agreement. You then say, Uh-huh.

22 What you didn't say is, But, Cheryl, even  
23 though I never made an agreement with you, you know I have  
24 two oral agreements with Brian. I've got one for  
25 three-percent proceeds bonus and I've got a second oral

1 agreement made before March 14th, 2007, for an earned,  
2 unpaid, annual bonus. You never said that in this  
3 conversation at all with Cheryl?

4 A. No, I did not.

5 Q. But you could have?

6 A. I could have.

7 Q. And could have made a record of it?

8 A. Yeah. As you can see, I didn't speak much --

9 Q. Had you had that deal with Cheryl, you could have  
10 got her on tape agreeing to it, right?

11 A. I wasn't trying to entrap anybody. I was trying  
12 to listen about the separation agreement; that both parties  
13 knew of the agreement.

14 Q. You weren't? I'm sorry. You were secretly  
15 recording Brian and Cheryl Potashnik on tape but you weren't  
16 trying to entrap anybody. Is that your statement?

17 A. I wanted to know why they sent me the separation  
18 agreement.

19 Q. No, no. Is that your statement?

20 A. I wanted to know why they sent me the separation  
21 agreement.

22 Q. Okay. Even though you had already asked the  
23 question before and you had already gotten the answer  
24 before; which was your earlier testimony today, correct?

25 A. I'm not exactly sure what you just said.

1 Q. Are you sure what you said today?

2 A. Yes.

3 Q. All right. Then you said, Yeah, I understand  
4 that. Just the way this reads doesn't cover that. Cheryl  
5 says, That -- that doesn't cover anything having to do with  
6 the sale because you don't have any rights under the sale.  
7 You have rights under your employment agreement. You said,  
8 Uh-huh. Cheryl says, And I have obligations as your  
9 employer.

10 MR. L. FRIEDMAN: Let's go forward.

11 Q. (By Mr. L. Friedman) Cheryl says, You know,  
12 it looked one way July 15th or June 15th, whichever. I  
13 don't remember the exact time frame. But, you know,  
14 anticipating another six months of overhead and all the  
15 obligations that go along with them, you know, it really  
16 starts to eat away at what's going to be left.

17 You knew that Cheryl was focused on the  
18 end, what was going to be left when the deal closed?

19 A. Yes, as well as I.

20 Q. I'll take yes.

21 MR. L. FRIEDMAN: Let's go further.

22 Q. (By Mr. L. Friedman) You say, Uh-huh. And then  
23 Cheryl says, And, uh, so I mean that the, uh -- the lack of  
24 putting things in writing up to this point has just been not  
25 knowing what to put in a way that works for everybody. And

1 I haven't been able to, you know, figure out -- figure  
2 it out to a point where I'm not afraid that we're leaving  
3 ourselves short. And that's why, if I can start to see, I  
4 can type up a closing statement and how the bottom line is  
5 going to look.

6 I can -- "(inaudible)". I mean, I want to  
7 see it. If it's a negative at the bottom where we actually  
8 have to owe them, you know. And then you say, No, I  
9 understand that portion of it.

10 What you didn't say, sir, is regardless of  
11 the deal closing, you still owe me my unearned --

12 MR. L. FRIEDMAN: Sorry, David.

13 Q. (By Mr. L. Friedman) -- unpaid annual bonus,  
14 right?

15 A. Right.

16 Q. You didn't stand up for your unearned second oral  
17 agreement, right?

18 A. No, I did not in that discussion.

19 Q. All right, let's move on.

20 A. I was in shock.

21 Q. I'm in shock myself.

22 A. Good. Both of us are.

23 Q. If you -- then Cheryl says, If you want to mark  
24 up -- If you want to mark that agreement up -- you say,  
25 Uh-huh -- Cheryl says, I'll look at it, you know, but that's

1 our standard agreement.

2 MR. L. FRIEDMAN: Let's go ahead.

3 Q. (By Mr. L. Friedman) And Cheryl says, Things  
4 haven't been good around here for a long time. And you say,  
5 Oh, we had money coming. We had some money coming. We  
6 closed a lot of deals. And Cheryl says, But, Jeff, you  
7 don't understand that that doesn't mean that things are  
8 good. That just means that there's money coming in. That  
9 doesn't mean that the money coming in is enough to cover the  
10 money that's due out. I mean --

11 And then you say, Well. Cheryl says, In  
12 2005 or back in 2004 when we -- Deepak and the allotment  
13 group was working to get those pre-allotment loans and all  
14 those deals, I mean, it looked like with those  
15 predevelopment loans we wouldn't have a problem then. You  
16 said, Uh-huh.

17 MR. L. FRIEDMAN: Let's move forward.

18 Q. (By Mr. L. Friedman) You know the name of a real  
19 estate -- I'm sorry. You know the nature of -- of real  
20 estate --

21 MR. L. FRIEDMAN: I work alone.

22 Q. (By Mr. L. Friedman) You know the nature of -- of  
23 real estate and the allotment business is that you never  
24 have any cash. It's a very illiquid.

25 You know, I regret some of the decisions

1 that we made and deals that we did and things like that, but  
2 I don't think you can really appreciate how much money has  
3 been --

4 And then you say, Well, I've been doing  
5 this --

6 Cheryl says, -- lost.

7 So you understood at that time that  
8 management wasn't flush with money. Isn't that true, sir?

9 A. Management was never going to be flush with money  
10 the way --

11 Q. Thank you. I'll take that answer.

12 A. -- the way it was --

13 Q. I'll take that answer.

14 MR. L. FRIEDMAN: The rest of it's  
15 unresponsive, Judge.

16 Q. (By Mr. L. Friedman) Then you say, Well. So, you  
17 know, under -- I understand the -- the floating, uh,  
18 barometer with the sale and all of that and the percentage  
19 of everything. I would like to have a more firmer  
20 commitment, you know, on those three years, which I think is  
21 very reasonable.

22 Now, you say want a more firmer commitment  
23 on those three years. What three years were you referring  
24 to, sir?

25 A. '5, '6, '7.

1 Q. 2005, 2006. 2006 to 2007, and the eight months of  
2 2007?

3 A. Yes.

4 Q. Two-and-a-half years?

5 A. Yes.

6 Q. Now, if you had this alleged second oral  
7 agreement, wouldn't that have been the time to say, But,  
8 Cheryl, Brian and I have an oral agreement that we made  
9 prior to March 14th, 2007? I want you and Brian to live up  
10 to that commitment. Wasn't that the time to say it, sir?

11 A. That would have been another time for me to say  
12 it.

13 Q. But, instead, you said -- you didn't say I have an  
14 agreement. You said I would like to have a more firmer  
15 commitment. That's what you said, right?

16 A. Yes. We just met the other day and discussed it  
17 in more detail.

18 Q. Sir, my question was only you wanted a more firmer  
19 commitment.

20 MR. L. FRIEDMAN: Everything after that is  
21 nonresponsive, Your Honor.

22 Q. (By Mr. L. Friedman) Cheryl said in response to  
23 your question for a more firmer commitment, Well, and like I  
24 said, I'd be willing to give you a minimum guarantee of the  
25 baseline fixed rate, which is 150,000. Beyond that, I'm not

1 going to, today, put anything in writing. I can't. And  
2 then you say, But if things improve, it could -- would be  
3 considered on the back end.

4 You're asking Cheryl to consider paying you  
5 more money on the back end; isn't that correct?

6 A. As she already --

7 Q. Sir --

8 A. -- insinuated --

9 Q. Sir, sir, isn't it correct you're asking her to  
10 consider paying you more money on the back end?

11 A. Yes, as stated previously.

12 Q. When you were the only one who knew there was  
13 going to be a record of whatever deal you thought you had,  
14 you're asking her to consider at her discretion paying you  
15 more money on the back end. Consider, right?

16 A. No. To honor the oral agreements.

17 Q. Did I miss that? Is that in this conversation?

18 A. You just asked the question and I --

19 Q. You're asking her to consider at her discretion  
20 whether or not to pay you, whether to pay more money at the  
21 back end?

22 A. Those were her words, previous.

23 Q. No, those were your words, sir.

24 A. Those were her words previously on this screen  
25 that we discussed a minute ago.



1 Q. Let me see.

2 What you didn't say was I'd like you to  
3 honor your commitment, right?

4 A. I did not say to honor the oral agreements,  
5 correct.

6 Q. With Brian. With Brian?

7 A. With Brian.

8 Q. And confirming your testimony yesterday -- well,  
9 first, you didn't remember it and then you saw it in your  
10 deposition -- you never had any agreement with Cheryl  
11 Potashnik. You never made any agreement with Cheryl  
12 Potashnik. That's what you testified to yesterday.

13 A. I said she knew of the agreement.

14 Q. Okay, she knew of it, but you never had any  
15 agreement with Cheryl Potashnik --

16 A. Correct.

17 Q. -- correct? Correct?

18 A. Correct.

19 Q. All right. So she was willing to give you a  
20 guarantee of 150,000. Beyond that, she was not going to put  
21 anything in writing. But that was not acceptable to you?

22 A. No, sir.

23 Q. Okay. Let's go on. Let's try to finish this.

24 Whatever. I'm not going to -- I'm not  
25 going to b-u-l-l-s-h-i-t you, Jeff. I've told you. I'm not

1 going to. You can come and look at whatever you want to  
2 look at. If you want to see Brian and my savings account  
3 and every transaction we've had since then to keep this  
4 company afloat, you can see it. I'm peeved. I'm not  
5 b-u-l-l-s-h-i-t-t-i-n-g you. And then you say, I -- I  
6 understand that.

7 You knew at that time that Brian and Cheryl  
8 had put their own money back in the company to keep  
9 it afloat, didn't you?

10 A. For their defense, yes.

11 Q. Sir, you knew at the time that Brian and Cheryl  
12 put their own money in the company to cover operating costs?

13 A. Operating cost or defense. I don't know how it  
14 was divided.

15 Q. No. I know you just said -- I know you're saying  
16 defense, but that money went into the general account and it  
17 was spent just like all the other money in the company.

18 A. I can't confirm that but I can assume that.

19 Q. You can assume that. So you really didn't mean  
20 defense. You just said it to --

21 A. No.

22 Q. -- to incite the jury.

23 A. No. No, no, no, no. Defense.

24 Q. All right.

25 A. 'Cause it was --

1 Q. All right. Well, you've already --

2 A. -- in Brian's --

3 Q. -- answered the question.

4 A. It was already told.

5 Q. You've already answered the question.

6 You said, I understand that. Cheryl says,  
7 I'm sorry that it's happened, you know. You know, when --  
8 when you take a company like ours that relies on development  
9 business and you stop doing development, it's not pretty.  
10 You said, I absolutely agree. It's been certainly both  
11 "(inaudible)" and understand that part of it. Cheryl said,  
12 As I do. I mean, you know --

13 And you say, I mean, all we needed to do  
14 was to keep three deals a year going.

15 Three development deals, right?

16 A. Yes.

17 Q. And Cheryl says, I don't know if that was true,  
18 but I don't know if three deals is the number.

19 And I think that's the end of the  
20 conversation.

21 MR. L. FRIEDMAN: Is this the time you want  
22 to take your morning break, Your Honor?

23 THE COURT: Yeah.

24 We'll take our 15-minute break, Ladies and  
25 gentlemen.

1 (The jury exited the courtroom.)

2 (Recess taken)

3 (The jury entered the courtroom.)

4 THE COURT: Welcome back. Good morning.

5 Good morning still, ladies and gentlemen.

6 We're going to -- we're still on

7 Mr. Carpenter's testimony but we're going to take a witness

8 out of order, and so we'll ask Mr. Donohue to call the next

9 witness.

10 MR. DONOHUE: Yes, Your Honor. The

11 defendants call Deepak Sulahke.

12 THE WITNESS: Yes.

13 THE COURT: And Mr. Sulahke's at the

14 witness stand. I swore him in before, earlier in the trial.

15 So his testimony, like all the witnesses, is under oath.

16 So, Mr. Donohue, if you'll pick up or start

17 where you'd like.

18 MR. DONOHUE: Thank you, Your Honor.

19 DEEPAK SULAHE,

20 having been previously sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. DONOHUE:

23 Q. Please state your full name.

24 A. Deepak B. Sulahke.

25 Q. And, Mr. Sulahke, you formerly worked for

1 Southwest Housing?

2 A. Yes, I do [sic].

3 Q. You still do or you did?

4 A. I did.

5 Q. You did. Okay.

6 And what -- in what capacity did you work  
7 for Southwest Housing?

8 A. Started off as vice president and at some point  
9 became senior vice president of development and finance.

10 Q. And, specifically, you worked for the development  
11 arm --

12 A. Yes.

13 Q. -- of Southwest Housing Development Company; is  
14 that right?

15 A. Correct.

16 Q. What time period did you work for Southwest  
17 Housing Development?

18 A. I think it was June of 2003 to May of 2008.

19 Q. And May of 2008, is that when the Cascade sale or  
20 acquisition took place?

21 A. Yes.

22 Q. And you left at that point?

23 A. The company stopped. So I didn't leave.

24 Q. The company just ceased doing business.

25 A. Ceased to exist, so...

1 Q. All right, sir.

2 A. Okay.

3 Q. And what did you do as -- as the -- for Southwest  
4 Housing Development as senior vice president of development?  
5 What did you do?

6 A. I headed the development team. So we brought new  
7 business in and we put together deals and, you know, closed  
8 the deals and handed over -- you know, handed over deals for  
9 construction. And then management took over, so...

10 Q. All right.

11 Did you work at all with Affordable  
12 construction, the construction arm of Southwest Housing?

13 A. I didn't work for them but there was a lot of  
14 coordination between my team and their team.

15 Q. All right. So you didn't work for them but you  
16 coordinated with them?

17 A. Uh-huh. Yes.

18 Q. And then as a separate company there was Southwest  
19 Housing Management Company; is that right?

20 A. Correct.

21 Q. All right. Did you -- did you work at all with  
22 them?

23 A. Yeah. There was coordination work with them, yes.

24 Q. All right.

25 And then at some point in time you came to

1 know Jeffrey Carpenter?

2 A. I did.

3 Q. All right. And that was before you were with  
4 Southwest Housing Development; is that right?

5 A. Yes.

6 Q. When did you know -- or come to know  
7 Mr. Carpenter?

8 A. I think it was sometime around 2000 -- 2001 or  
9 2002 at my previous job. Jeff headed the management team  
10 there and I -- I came to know of him then.

11 Q. All right. And what was the name of that company?

12 A. Fore Property Company.

13 Q. F-o-r-e?

14 A. F-o-r-e, yes.

15 Q. All right.

16 And Mr. Carpenter worked there too for the  
17 management --

18 A. Management company, yes.

19 Q. All right.

20 And then you went to Southwest Housing  
21 Development in 2003. At some point, did you refer  
22 Mr. Carpenter to the Southwest Housing organization?

23 A. I did.

24 Q. All right. And at some point Mr. -- Mr. Carpenter  
25 actually took your referral and came on with Southwest

1 Housing Management; is that right?

2 A. Correct.

3 Q. And what was your understanding of Mr. Carpenter's  
4 job responsibilities there as executive vice president for  
5 Southwest Housing Management?

6 MS. GIBSON: Object. Lack of foundation.

7 THE COURT: Overruled.

8 Q. (By Mr. Donohue) Did you have an understanding  
9 what --

10 A. Yeah. Yes. Jeff's duties included, you know, to  
11 head the management team, to make sure that the properties  
12 were getting up, you know, were operating property --  
13 properly and, you know, the lease was going well and the  
14 properties were -- you know, he was responsible for  
15 day-to-day operations of the property.

16 Q. All right.

17 In your position there as senior -- in  
18 charge of development there at Southwest Housing  
19 Development, who did you report to?

20 A. Brian Potashnik.

21 Q. All right. And who did Mr. Carpenter report to?

22 A. Brian Potashnik.

23 Q. Brian Potashnik was the head of each of those  
24 separate companies?

25 A. Correct.



1 Q. Now, at some point in time -- well, tell me. What  
2 was your relationship like with Mr. Carpenter? I know you  
3 worked and coordinated with Southwest Housing Management  
4 there in your position at Southwest Housing Development, but  
5 did you have any other relationship, business or personal or  
6 otherwise, with Mr. Carpenter?

7 A. Yes. Jeff was a neighbor. I mean, he lived just  
8 five homes down the street, and so we would meet on -- you  
9 know, we used to meet off -- off work. And, you know, we  
10 would go have drinks together and, you know, meet on a  
11 regular basis, so...

12 Q. All right. So you just lived five houses down,  
13 what, on Mimosa Street?

14 A. Yeah.

15 Q. And where would you have drinks?

16 A. Trinity Hall. And there was one, I think. And  
17 subsequently, you know, we would meet up at Sherlock.

18 Q. Sherlock's?

19 A. Yeah.

20 Q. Did Mr. Jones, Keith Jones, also join you from  
21 time to time?

22 A. Yes. Sure did. Yes.

23 Q. So the three of you would have beer or whatever it  
24 was that you were drinking there at Sherlock's?

25 A. Yes.

1 Q. And did there come a time that you understand that  
2 Mr. Carpenter ended up suing the Southwest Housing entities  
3 and both Potashniks?

4 A. Yes.

5 Q. Did he ask you to join the lawsuit?

6 A. At some point he urged us to. Yes, he did.

7 Q. All right.

8 I'll represent to you that the actual  
9 lawsuit was filed in March of 2008.

10 A. Uh-huh.

11 Q. Before the closing, when you left in April or May  
12 of 2008, did he ask you to join the lawsuit before or after  
13 he actually filed it in March of '08?

14 A. Before. Before he filed the lawsuit.

15 Q. Before he filed it.

16 Did he ask Mr. Jones to join in the  
17 lawsuit?

18 A. My recollection is that it came up at one of  
19 our -- you know, one of our meetings at these -- at Trinity  
20 or Sherlock's. I don't recall exactly where, but I think  
21 it came up, you know, when we were drinking. It came up,  
22 yes.

23 Q. All right.

24 A. So my recollection is Keith was there, but --

25 Q. All right, Keith was there when Mr. Carpenter

1 asked you to join him in the lawsuit?

2 A. Correct.

3 Q. All right. Did he ask Mr. Jones? Or do you  
4 recall?

5 A. My recollection is that it came up at the table,  
6 yeah.

7 Q. So rather than directed just to you it was  
8 directed to the table, to the both of you?

9 A. Correct.

10 Q. All right. And what did you tell Mr. Carpenter?

11 A. I said I don't need to. I said I don't -- I don't  
12 have any need to do that. So I declined.

13 Q. Go ahead. I'm sorry.

14 A. I declined. I declined to join the lawsuit.

15 Q. Did Mr. Jones? Do you recall? Did he have any  
16 response to Mr. Carpenter's inquiry about joining the  
17 lawsuit?

18 A. I don't -- I don't recall what Mr. Jones said but  
19 I think he declined as well. But I really can't speak for  
20 him. I know that I declined, so...

21 Q. All right.

22 Now, your deposition was taken in this case  
23 by me in July of 2010. Do you remember that?

24 A. Yes.

25 Q. All right. And I'll represent to you that the

1 deposition of Mr. Carpenter, his first deposition in this  
2 case, was taken in March; that same year, March of 2010.

3 A. Okay.

4 Q. All right?

5 A. Uh-huh.

6 Q. Between the time that Mr. Carpenter left Southwest  
7 Housing and his deposition was taken in March of 2010, did  
8 you have any discussions with Mr. Carpenter about what --  
9 about his feeling or his belief or anything along that lines  
10 that he was owed any bonus from the sales proceeds of the  
11 sold companies?

12 A. It's come up numerous times, numerous times. And  
13 he's referred -- he made representation that he was informed  
14 that he -- that he was going to get a, you know, quote,  
15 unquote, a piece of the deal. So I don't know -- and he --  
16 he would ask me what that meant. Meaning he would try to  
17 figure out what exactly that meant, that entailed, so...

18 Q. All right. So before his deposition was taken he  
19 even asked you that he, what, felt like he had a piece of  
20 the deal or what?

21 A. He told me that he was represented -- it was  
22 represented to him that he would have a piece of the deal.

23 Q. All right. Did he ever tell you what that piece  
24 of the deal would be?

25 A. No.

1 Q. Did he ever ask you that, hey, do you think this  
2 percentage or that percentage is fair?

3 A. Correct.

4 He would -- you know, I think he was -- my  
5 recollection is he was trying to figure out what that  
6 percentage, what that piece of the deal actually meant. So  
7 he was trying to figure out if it was one percent or five  
8 percent or ten percent or -- so it was -- you know, I think,  
9 you know -- and most of the times that it came up it was he  
10 was trying to figure out exactly what that meant. So if  
11 there was, I don't recall him telling me that there was a  
12 set number, so...

13 Q. All right. He never told you a set percentage  
14 before his deposition was taken in March of 2010. But he  
15 said that, what, he felt he had a piece of the deal?

16 A. Yes.

17 Q. All right.

18 And he never told you before his deposition  
19 was taken what percentage, if any, he said that piece of the  
20 deal is or should be or what he felt he should get?

21 A. No.

22 Q. All right.

23 He didn't say one percentage, three  
24 percent, five percent, ten percent?

25 A. No. He -- you know, I mean, he would -- he would

1 try to figure out what that meant so that -- you know, he  
2 has asked me if it was one percent or five percent or -- you  
3 know, so it's -- he has thrown up that number, but the  
4 number came out more as a question to me, you know, as what  
5 exactly it meant when someone offered a piece of the deal.

6 Q. So he was asking you -- did he ask you, Do you  
7 think one percent or five percent --

8 A. Yes.

9 Q. -- or three percent would be fair?

10 A. Correct. That's exactly how it was, yes.

11 Q. So he asked you what he [sic] thought -- what you  
12 thought would be a fair percentage of the deal?

13 A. Correct.

14 Q. He didn't tell you that he had been promised a  
15 percentage of the deal?

16 A. No, he did not.

17 Q. He didn't tell you that back in 2006, supposedly,  
18 that Brian Potashnik had agreed to pay him three percent of  
19 the deal?

20 A. No, he did not.

21 Q. That never came up? He never -- never said that?

22 A. No.

23 Q. What about after his deposition was taken and you  
24 read his deposition?

25 Do you recall reading his deposition?

1           A.    Yeah.  That's the first thing that struck [sic]  
2   out was I think there might have -- the first thing that  
3   struck [sic] out was the three percent seemed like it was a  
4   very set number from his deposition; that that's what was  
5   offered to him by Brian.  But that's something that had  
6   never come up when we -- when I went with him.  So I think I  
7   made a note of it and said that that number was never --  
8   never ever discussed with me.

9           Q.    Okay.  So after you read the deposition you were  
10  struck in the deposition when he said he had three percent  
11  of the deal?

12          A.    Correct.

13          Q.    And, in fact, you brought that up to Mr. Carpenter  
14  after his deposition that, hey, you've never told me that  
15  you had three percent of the deal?

16          A.    Yes.

17          Q.    And then what did he say?

18          A.    He declined.  He said that that's what I had,  
19  so...

20          Q.    Although he'd never told you before his deposition  
21  that that's what he had?

22          A.    Correct.

23          Q.    In fact, he was asking you what do you think is a  
24  fair percentage?

25          A.    Yes.

1 Q. When he went to -- did he ever say before his  
2 deposition five percent, does five percent sound like a fair  
3 deal?

4 A. Well, he's asked me. He's thrown out various  
5 numbers, you know. And he says, Do you think one percent or  
6 five percent or ten percent? He said, What does it mean  
7 when -- when I'm going to get a piece of the deal? So...

8 Q. All right. And what did you tell him in response  
9 when he was inquiring with you as far as these percentages  
10 of the deal?

11 A. I told him that even one percent was too high for  
12 someone at his position. That's my belief. And I mentioned  
13 that in my deposition because what the market is offering,  
14 you know, that even that was a pretty high number.

15 And I felt that, you know, one should value  
16 your own self rather than -- when someone else calls you a  
17 partner, he's basically trying to encourage you. He's  
18 trying to help you out, you know, and make you feel like  
19 this is part of your team. Just because he's called you a  
20 partner doesn't mean it's a financial, you know,  
21 relationship.

22 And I kind of tried to help him out, at  
23 least mention to him that, you know, market -- the market  
24 for what his position is, is that what he has in his money  
25 was way too much. And I have had discussions with him that,



1       you know, that what they were offering of his work, what  
2       other people were getting paid --

3             Q.     I don't want to go there, Mr. Sulahke. I don't  
4       want to go there. Thank you very much.

5                     Let me ask you. In observing what  
6       Mr. Carpenter did as executive vice president for Southwest  
7       Housing Management, did you ever observe him do anything  
8       over and above what his job was for Southwest Housing  
9       Management?

10            A.     Well, it's doing -- during the raid, I think there  
11       was one -- I will -- you know, I mean, overall, the  
12       coordination and everything else is typical of what a  
13       management person would do. But I do think that he has  
14       helped out during the FBI raids and all that, you know; that  
15       he did, you know --

16            Q.     All right.

17            A.     -- that he did work on it.

18            Q.     And was it your understanding that he did so at  
19       the direction of the Potashniks?

20            A.     Correct. He did so.

21            Q.     All right.

22                     But there were others that helped out as  
23       far as gathering information that would have been  
24       subpoenaed, that time frame?

25            A.     Yes.

1 Q. But it wasn't just him alone?

2 A. No. Yeah, there was a team working on it. Yes.

3 Q. And same thing with the disaster that took place  
4 down in Houston with Katrina --

5 A. Uh-huh.

6 Q. -- as well as Rita. I understand that there was  
7 a -- there was an overall team effort at the Southwest  
8 Housing organization to help out those victims?

9 A. Correct.

10 Q. And it was including Mr. Carpenter as well as  
11 others?

12 A. Yes, but all at the direction of Brian. Yes.

13 Q. And it was financed. It was all paid for by the  
14 Potashniks, wasn't it?

15 A. Correct.

16 MR. DONOHUE: I'll pass the witness.

17 THE COURT: Ms. Gibson.

18 CROSS-EXAMINATION

19 BY MS. GIBSON:

20 Q. Mr. Sulahke, when you talk about Jeff saying, you  
21 know, when he was mentioning five percent in connection with  
22 the cut of the deal, do you recall that?

23 A. I'm sorry?

24 Q. When you were -- when you were saying that  
25 Jeff Carpenter was asking you, like, would five percent be

1 reasonable --

2 A. Yeah. It wasn't, like, five percent, you know.  
3 It was, like, is one percent reasonable or three percent  
4 reasonable or five percent.

5 Q. Right.

6 A. So it wasn't, like, a set number.

7 Q. What -- what time frame? Can you pinpoint a time  
8 frame when this discussion happened?

9 A. This was when -- this was when the sale was  
10 determined. I mean it was when we -- when we were headed  
11 towards the sale. When the -- you know, when Brian and  
12 Cheryl decided to sell the company. So at that point in  
13 time, you know, we started having some discussions on it.

14 Q. So at the point in time Brian and Cheryl decided  
15 to start the company -- or sell the company?

16 A. Shortly after that, yes.

17 Q. Okay, shortly after that.

18 And are you aware that after -- after  
19 Brian Potashnik offered Jeff three percent -- I mean,  
20 there's a formula -- three percent under a certain formula,  
21 that Jeff went back and asked about whether he could get  
22 five percent instead?

23 A. No, I was never informed. I was never told about  
24 that.

25 Q. Okay. But all of this was at the beginning when

1 Brian and Cheryl initially decided to sell the business.  
2 That's the time frame you're talking about?

3 A. No, no. This was when they decided. This is  
4 after they decided to sell the business.

5 Q. Okay. In that time frame?

6 A. Yes.

7 Q. Okay.

8 You talked about someone calling  
9 Jeff Carpenter a partner. What are you talking about?

10 A. That's what he represented to me that he was.  
11 That he was, you know, being referred to as represented as a  
12 partner, so...

13 Q. Brian Potashnik had?

14 A. Yeah. That's what Jeff told me, yes.

15 Q. Referred to him as a partner. Okay.

16 And you said at one point that  
17 Jeff Carpenter asked you to join this lawsuit?

18 A. Yes.

19 Q. And you said that Keith Jones was there?

20 A. Yes.

21 Q. All right. Are you --

22 A. Oh, that was once, but there were -- this happened  
23 a couple, two, three times at least, so...

24 Q. Okay.

25 Are you aware that when Keith Jones was

1 asked, "Did Jeff ever ask you or Deepak or anyone else that  
2 you know of to consider or sue Brian or Cheryl Potashnik or  
3 the Southwest entities," he said no?

4 A. I can tell you -- like I said, I can tell you what  
5 I was asked. And I was asked to join the lawsuit and I  
6 declined.

7 Q. Are you aware that when Keith Jones was asked --  
8 who you claim was there -- the question he never mentioned  
9 that, hey, will you join me too, anything along those lines,  
10 that he said no?

11 A. No.

12 Q. Were you aware of that?

13 A. No.

14 Q. Mr. Sulahke, you recommended Jeff Carpenter for  
15 hire at Southwest Housing?

16 A. I did.

17 Q. Okay.

18 And you asked Jeff Carpenter to help you  
19 out with work even after -- for your company even after he  
20 left Southwest Housing?

21 A. Very little. And I chose not to continue with  
22 that any further.

23 Q. Okay. But you said very little, so --

24 A. Yeah.

25 Q. -- so the answer is yes --

1 A. Yes.

2 Q. -- to help on some projects?

3 Do you recall sitting with Jeff at your  
4 house on the couch that's parallel to the fireplace and  
5 saying to Jeff you heard from Brian that Jeff may not have  
6 to work again due to the asset sale payment to Jeff or words  
7 to that effect?

8 A. That's -- yes.

9 Q. Did Jeff Carpenter work hard in his job at  
10 Southwest Housing?

11 A. Yeah. He was there. He was there a lot, but so  
12 were all the executives. I mean, we all worked very hard,  
13 so...

14 Q. And without getting into details, are bonuses part  
15 of the reason you work -- people worked extra hard?

16 A. No.

17 MR. DONOHUE: Objection, Your Honor.  
18 Violates the order in limine.

19 MS. GIBSON: I'm not asking for details,  
20 just working hard.

21 THE COURT: Objection's sustained.

22 MS. GIBSON: Okay.

23 Q. (By Ms. Gibson) Do you remember that at some point  
24 when you were having lunch with Rick Fore, Rick asked about  
25 Jeff and Rick told you that Jeff was one of the best

1 operators he had -- he had ever experienced --

2 MR. DONOHUE: Objection.

3 Q. (By Ms. Gibson) -- or words to that -- along those  
4 lines?

5 A. No. I don't recall that.

6 MR. DONOHUE: Objection. Objection. Calls  
7 for hearsay.

8 MS. GIBSON: Okay. He already said he does  
9 not recall.

10 THE WITNESS: No.

11 Q. (By Ms. Gibson) Okay. But you do recall sitting  
12 on the couch in front of the fireplace and saying you heard  
13 from Brian that Jeff may not need to work again due to the  
14 asset sale payment to him?

15 A. I don't know whether the asset sale but, you know,  
16 he just said Jeff may not have to work again, you know,  
17 if -- if the transactions went well, so...

18 Q. And by the transactions you're talking about the  
19 sale?

20 A. The exact verbiage I don't know, but he did say  
21 something to the effect that Jeff might not have to work  
22 again.

23 MS. GIBSON: Pass the witness.

24 THE COURT: Mr. Donohue.

25 MR. DONOHUE: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. DONOHUE:

Q. Neither of the Potashniks ever tell you that they had -- that Mr. Carpenter had a piece of the deal, did they?

A. No, never.

Q. Did Mr. Carpenter ever represent to you, whether it be exaggeration or hyperbole, that he was an effective -- that he was, in effect, the president of all the Southwest entities?

A. Yes.

MS. GIBSON: I'm going to object to leading and beyond the scope. It's an entirely new topic.

THE COURT: I don't know whether it was -- I'm not sure who's witness it is, if it's an adverse witness, but y'all are beyond the scope of her examination.

MR. DONOHUE: I'll pass the witness.

THE COURT: Ms. Gibson?

MS. GIBSON: Nothing further.

THE COURT: All right.

Thank you, Mr. Sulahke. You are free to leave the courthouse and you're released from the subpoena.

We're going back to Mr. Carpenter.

Mr. Friedman?

MR. L. FRIEDMAN: Yes. May I just have a moment?



1 (Off the record)

2 JEFFREY CARPENTER,

3 having been previously sworn, testified as follows:

4 CROSS-EXAMINATION (CONT'D)

5 BY MR. L. FRIEDMAN:

6 Q. Mr. Carpenter, I took your deposition for the  
7 first time on March 16th, 2010. And that was after you  
8 testified today that you had this oral agreement with  
9 Brian Potashnik to pay you a hundred -- \$400,000. Remember  
10 when I took your deposition in 2010?

11 A. Vaguely.

12 Q. When I asked you about -- to tell me the amount of  
13 money you were claiming for your earned, unpaid, annual  
14 bonuses, you couldn't tell me the amount. Do you remember  
15 that?

16 A. Not off the top of my head, no, sir.

17 Q. All right.

18 MR. L. FRIEDMAN: Would you play  
19 that section for me, please? Page and line? Yeah.

20 MR. PAGE: It's Page 12, Line 6, through  
21 Page 13, Line --

22 MR. L. FRIEDMAN: Page 12, Line 6, through  
23 13, Line 9. March 16, 2010 deposition.

24 Wait.

25 Ms. Gibson, you there?

1 MS. GIBSON: Yes. Go ahead.

2 (Video playing)

3 Q. "Mr. Carpenter, with regard to what I'm calling  
4 claim number one, March 2004 to March 2005, can you give me  
5 a specific dollar amount of your claim today?"

6 A. "I can give you a range. I cannot give you a  
7 specific dollar amount."

8 Q. "All right. You've given me the range, but I'm  
9 asking you for a specific dollar amount of your claim. Can  
10 you give me a specific dollar amount of your claim?"

11 A. "No, I cannot."

12 Q. "Okay. With regard to claim number two, what I'm  
13 calling claim number two, March of 2005 to March of 2006,  
14 can you give me a specific dollar amount of your claim,  
15 sir?"

16 A. "No, sir."

17 Q. "With regard to what I'm calling claim number  
18 three, March of 2006 to March of 2007, can you give me a  
19 specific dollar amount of your claim, sir?"

20 A. "No, sir. And I can tell you why for all three of  
21 those, 'cause it's the same."

22 "Go ahead."

23 Q. "The fun part about being a lawyer is that I get  
24 to ask the questions."

25 A. "Very good."

1 Q. "Thank you."

2 "With regard to claim number four, can you  
3 give -- what I'm calling claim number four from March of '07  
4 to November 2nd, 2007, can you give me a specific amount of  
5 your claim?"

6 A. "No, sir."

7 (Video ended)

8 Q. (By Mr. L. Friedman) All right. Do you recall  
9 giving that testimony in March of 2010, sir?

10 A. As just seen, yes.

11 Q. So in March of 2010 you could not state the amount  
12 of your bonus claim, correct? Isn't that correct?

13 A. From what was shown on the screen, yes.

14 Q. Now, also, you remember these personal notes that  
15 you wrote in your Email to Cheryl and Brian Potashnik of  
16 November 15th, 230 -- 2007.

17 MR. L. FRIEDMAN: Do you have that,  
18 Defendants' Number 24? Show the whole thing through.

19 Q. (By Mr. L. Friedman) We've discussed this Email  
20 before?

21 A. Yes.

22 Q. Do you have it in front of you?

23 A. I was looking for it.

24 Q. Go ahead. Take a minute.

25 A. This is it.

1 Q. Now, November 15th, 2007, is two weeks after your  
2 employment was terminated by Southwest Housing Management,  
3 correct?

4 A. Yes.

5 Q. And that was after -- supposedly, eight months  
6 after you had this second oral agreement with Brian  
7 Potashnik for earned, unpaid, annual bonuses where he and  
8 you supposedly agreed to an amount of \$400,000, correct?

9 A. Yes.

10 Q. All right. So there's the date.

11 MR. L. FRIEDMAN: Let's see the to and  
12 from, please.

13 Q. (By Mr. L. Friedman) And you identify that as your  
14 Email, correct?

15 A. Yes.

16 Q. And on Page 4 of your Email or attached to this  
17 Email is a separation agreement that you've previously  
18 testified --

19 MR. L. FRIEDMAN: Let's go to the  
20 separation agreement attached.

21 Q. (By Mr. L. Friedman) -- that you've previously  
22 testified you drafted, correct?

23 A. Yes.

24 MR. L. FRIEDMAN: Go to Paragraph 4. Bring  
25 it to the top of the screen, please.

1 Q. (By Mr. L. Friedman) So in that Paragraph 4 you  
2 say the company and the Potashniks acknowledge that employee  
3 has earned and is owed unpaid annual wages and bonuses in  
4 the amount of \$600,000. See that?

5 A. Yes.

6 Q. You wrote that?

7 A. Yes.

8 Q. You wrote that eight months after you claimed you  
9 had an oral agreement with Brian Potashnik?

10 A. Yes.

11 Q. For \$400,000?

12 A. Yes.

13 Q. Is that another mistake?

14 A. No.

15 Q. Still negotiating?

16 A. Negotiating that one, yes.

17 Q. You didn't have a firm agreement. You were still  
18 negotiating that, right?

19 A. That was firm. I was negotiating for more.

20 Q. You wanted more.

21 A. I wanted more, based on my agreement.

22 Q. I'm going to put down 11/15/07 wanted more.

23 Okay. So, also, on November 15th -- I'm  
24 sorry. On March 14th, you send personal notes.

25 Do you have the personal notes?

1 A. I just had them. Those personal notes?

2 Q. Yeah.

3 MS. GIBSON: Those aren't redacted. Just  
4 FYI.

5 MR. L. FRIEDMAN: Well, let's go to the  
6 employment agreement. I'm sorry. Let's go to the schedule  
7 on Page 3 of those personal notes.

8 Q. (By Mr. L. Friedman) Now, these personal notes  
9 were dated March 14th, 2007, right?

10 A. Yes.

11 Q. And that was, what, a day or two or three after  
12 your supposed -- your drive with Mr. Potashnik?

13 A. Yes, sir.

14 Q. How many days? One day? Three days?

15 A. A few days.

16 Q. A few days.

17 A few days after your drive with  
18 Mr. Potashnik you handed him a schedule showing him the  
19 bonuses that you're entitled to, right?

20 A. No, sir.

21 Q. It says --

22 A. I showed him --

23 Q. -- unearned --

24 A. -- what I was --

25 Q. Excuse me.

1                   Showed unearned bonuses unpaid, wage  
2                   difference unpaid, annual bonuses paid, you acknowledge the  
3                   first-year bonus, due 600,000. Isn't that what you said,  
4                   due 600,000?

5                   A.     This was part of the discussion for, basically, a  
6                   performance review and what I brought in as a document for  
7                   discussion, yes.

8                   Q.     So after you made -- your testimony is that after  
9                   you made your oral agreement for a three-percent bonus and  
10                  after you made --

11                  MR. L. FRIEDMAN: Sorry, Judge.

12                  Q.     (By Mr. L. Friedman) -- after you made an oral  
13                  agreement for the earned, unpaid, annual bonus you're still  
14                  negotiating with Brian Potashnik for more?

15                  A.     At that time, yes.

16                  Q.     At that time was a few days after you'd made your  
17                  second oral agreement, according to you?

18                  A.     Yes. And --

19                  Q.     I'll take yes.

20                  A.     -- I confirmed --

21                  Q.     I'll take yes as an answer.

22                  A.     -- that as well.

23                  Q.     Let's go to the employment agreement, amended  
24                  employment agreement, which you also sent to Brian Potashnik  
25                  on March 14th. Do you remember that?

1           A.     Vaguel y.

2                         MR. L. FRIEDMAN:   Okay, let's go to the  
3 amended employment agreement.

4                         (Pause)

5                         Am I waiting on you, Mr. Page, or are you  
6 waiting on me?

7           Q.     (By Mr. L. Friedman) So this is a copy of the  
8 amended employment agreement that you submitted to  
9 Brian Potashnik on March 14th, 2007, a few days after your  
10 alleged oral agreement for \$400,000 on the unpaid, earned,  
11 annual bonus. Remember this?

12           A.     Yes.

13           Q.     And if we look at Page 2 right over here --

14                         MR. L. FRIEDMAN:   Can we pull this  
15 paragraph up?

16           Q.     (By Mr. L. Friedman) -- you mention not the  
17 400,000 that allegedly you agreed to orally a couple days  
18 before. You've now, in your prepared amended oral  
19 agreement -- I'm sorry -- amended employment agreement  
20 you're saying to Mr. Potashnik the employer entities also  
21 acknowledge that employee is to be paid compensation for  
22 unpaid and past-due earnings of income compensation,  
23 including wages and bonuses in the amount of \$600,000 from  
24 the period of March 15th, 2004, to March 14th, 2007.

25                         Remember that?



1 A. Yes.

2 Q. So you've already testified you're not claiming  
3 any wages in this lawsuit, right?

4 A. Correct.

5 Q. And you've already testified that within a few  
6 days before you sent this to Mr. Potashnik you had agreed on  
7 a \$400,000 earned, unpaid, bonus number?

8 A. Yes.

9 Q. So here you were still, what, negotiating for  
10 more?

11 A. I believe I was due more and I presented that.

12 Q. Were you negotiating for more?

13 A. I was negotiating for more.

14 Q. So your --

15 A. And I was asked --

16 Q. Sir.

17 A. -- to put this proposal together.

18 Q. I'll take -- I'll take more. More is enough.

19 A. Okay.

20 Q. So your alleged oral agreement with Mr. Potashnik  
21 wasn't final, right?

22 A. It was final up to the 400,000.

23 Q. It was final, except you wanted more?

24 A. Correct.

25 MR. L. FRIEDMAN: You can take that down.

1 Q. (By Mr. L. Friedman) Now --

2 MR. L. FRIEDMAN: Has this been admitted?

3 MR. DONOHUE: (Inaudible).

4 MR. L. FRIEDMAN: Does he have a copy?

5 MR. DONOHUE: No.

6 MR. L. FRIEDMAN: Your Honor, may I  
7 approach the witness?

8 THE COURT: Okay.

9 MR. L. FRIEDMAN: I'll give you a copy of  
10 Defendants' 6.

11 MS. GIBSON: Thank you.

12 Q. (By Mr. L. Friedman) Mr. Carpenter, do you  
13 recognize Defendants' 6?

14 MR. DONOHUE: Defendants' 25.

15 MR. L. FRIEDMAN: I'm sorry. Defendants'  
16 25. I was confused because it says Exhibit 6.

17 Q. (By Mr. L. Friedman) It's Defendants' 25.

18 A. Just one moment.

19 (Pause)

20 A. Yes.

21 MR. L. FRIEDMAN: Now I'll move for  
22 admission of 25, Your Honor.

23 MS. GIBSON: There seems to be a random  
24 document attached to it.

25 THE COURT: That shouldn't be attached?

1 MS. GIBSON: That should not be attached.

2 THE COURT: Let me see it, Mr. --

3 MR. DONOHUE: Your Honor, we agree. There  
4 is a random document that needs to come off and does not  
5 need to be part of that exhibit. It's the last page.

6 THE COURT: Other than that, was there an  
7 objection?

8 MS. GIBSON: No.

9 THE COURT: Okay, 25 is admitted.

10 MR. L. FRIEDMAN: So let's -- would you put  
11 it up, Mr. Page?

12 Q. (By Mr. L. Friedman) Let's just go to the second  
13 page. The second page of this exhibit, Carpenter 083 --  
14 there you go -- reflects the same Email from you to the  
15 Potashniks that we discussed earlier in your testimony,  
16 correct?

17 A. Yes, sir.

18 Q. And the third page of this exhibit, 084, is  
19 Cheryl Potashnik's Email of 12/11/07 back to you?

20 A. Yes, sir.

21 Q. All right.

22 Now, in this Email Cheryl says -- this is  
23 December 11th, 2007. This is about five weeks after your  
24 termination at Southwest Housing Management, right?

25 A. Yes, sir.

1 Q. All right.

2 Cheryl says, Jeff, as you are aware, we  
3 have honored your current employment contract by paying you  
4 six weeks severance equal to six weeks base salary.

5 As required by law, you and your eligible  
6 dependents are also entitled to elect COBRA benefits.  
7 Devona Gray has contacted you recently regarding this and  
8 you will be receiving the paperwork shortly.

9 However, as you know, your employment  
10 contract does not provide for you to receive any bonus after  
11 termination. I spoke with Brian and he told me that he  
12 never agreed to pay you three percent of gross after the  
13 sale of the business, as you proposed in your draft  
14 separation agreement.

15 As you are aware, the sale of the business  
16 has not yet occurred. If and when the sale occurs, it is  
17 only at that time that we will be able to assess if any of  
18 the net profits will be shared with various employees. For  
19 this reason as well as other factors involved, we cannot  
20 make any promises or enter into any specific agreements with  
21 anyone for possible future payments relating to the future  
22 sale of the business.

23 Also, we have not agreed to pay you 600,000  
24 for unpaid wages and bonuses, as you have also proposed in  
25 your draft separation agreement. Such payments would not be

1 consistent with your employment contract. Finally, I would  
2 like to remind you of your obligations under Paragraph 9 of  
3 your employment agreement.

4 Then Cheryl says, If you are still  
5 interested in our reasonable offer to pay you \$150,000 in  
6 accordance with the separation agreement we previously  
7 provided to you, please let me know by December 17th, 2007.

8 Mr. Carpenter, the message that  
9 Cheryl Potashnik is conveying here is the same message that  
10 she gave you in the secretly recorded conversation that you  
11 recorded on November 2nd, 2007, correct?

12 A. Somewhat.

13 Q. Yeah. She said not going to make any commitments,  
14 correct?

15 A. Yes.

16 Q. Going to wait till the -- sees what the sales  
17 proceeds are, correct?

18 A. Yes.

19 Q. And specifically rejects your proposal or  
20 negotiations for 600,000 in unpaid wages and/or bonuses,  
21 right?

22 A. Yes.

23 Q. Now, by December 11, 2007, you were paid all of  
24 your wages?

25 A. Yes.

1 Q. But yet you're still making claims for wages?

2 A. No.

3 Q. All right.

4 A. I was making claim for the oral agreements.

5 Q. I'm going to accept -- I accept no.

6 Now, when I took your deposition two weeks  
7 ago, do you recall testifying that your three-percent bonus  
8 was based off of the Cascade LOI? It included three percent  
9 of the gross sales price minus normal closing costs,  
10 including broker's fees, title fees, legal fees, things like  
11 that. And then, also, minus other employees' bonuses before  
12 your three percent would be calculated.

13 Do you remember that?

14 A. Yes.

15 Q. So, as of two weeks ago, your testimony --  
16 according to your testimony, is that other employees'  
17 bonuses would be deducted from a calculation before your  
18 bonus was calculated, correct?

19 A. That's correct.

20 Q. All right.

21 I'm going to write that down, sir, then  
22 pass the witness.

23 MR. L. FRIEDMAN: Mr. Page, what was the  
24 date of that? Was it 3/18?

25 MS. GIBSON: Let me know when you're ready,

1 Larry.

2 MR. L. FRIEDMAN: Okay.

3 The deposition was 3/18?

4 MR. PAGE: 3/16.

5 MR. L. FRIEDMAN: I'm sorry. January 16.

6 MS. GIBSON: It was the 15th.

7 MR. DONOHUE: Yeah, it was 15th.

8 MR. L. FRIEDMAN: So we'll go January 15.

9 MR. DONOHUE: 15th, 2018.

10 Q. (By Mr. L. Friedman) Deduct payments to other  
11 employees before J.C.'s -- you know it's Jeff Carpenter?

12 A. Yes.

13 Q. -- before Jeff Carpenter's bonus is calculated.  
14 That's correct, isn't it?

15 A. That's -- that was the agreement.

16 Q. All right.

17 MR. L. FRIEDMAN: I'll pass the witness,  
18 Your Honor.

19 THE COURT: Ms. Gibson.

20 REDIRECT EXAMINATION

21 BY MS. GIBSON:

22 Q. Mr. Carpenter, looking at -- Mr. Friedman has  
23 talked about various words used to describe this latter  
24 deduction. What type of bonus are you talking about? What  
25 type of employee bonus is coming off?

1           A.     It was the -- whether we're calling it stay bonus,  
2     retention bonus, or severance bonus of the corporate-related  
3     people.

4           Q.     Okay.

5                     Mr. Carpenter, you said you're not seeking  
6     wages. What -- what are you talking about when you talk  
7     about wages?

8           A.     My annual compensation of 200,000.

9           Q.     Salary --

10          A.     Salary.

11          Q.     -- is what that means?

12          A.     Yes.

13          Q.     Okay.

14                     Mr. Friedman spent some time talking about  
15     your written agreement with Southwest Housing and that  
16     amendments and modifications had to be in writing. Remember  
17     that?

18          A.     Yes, ma'am.

19          Q.     We're going to talk about that for a moment.

20                     And if you would, because I think this  
21     exhibit is on the bench up here, just look along on your  
22     screen with me, okay?

23          A.     Oh, okay.

24          Q.     Under Paragraph 3, duties --

25                     THE WITNESS: Pardon me. That easel is --



1 MR. DONOHUE: I'll move it.

2 THE WITNESS: -- in my way now.

3 MS. GIBSON: I'm sorry?

4 MR. DONOHUE: I'll move it back.

5 THE WITNESS: The easel is in my way.

6 Sorry.

7 Thank you.

8 Q. (By Ms. Gibson) Okay. You see in Paragraph 3B  
9 that this contract anticipates that at some point in the  
10 future you may be employed for affiliates of Southwest  
11 Housing Management?

12 A. That is correct.

13 Q. Okay.

14 And does that paragraph contemplate there  
15 may be some separate deals in the future?

16 A. Yes.

17 Q. And if you look back on day one under this  
18 employment agreement, you see that the bonus range is only  
19 for the first year?

20 A. Yes, ma'am.

21 Q. Calendar year of employment?

22 A. Yes.

23 Q. And they're going to provide a separate detailed  
24 bonus plan within 90 days?

25 A. Yes.

1 Q. Okay. That -- was that done?

2 A. No, it was not.

3 Q. Okay.

4 So from day one this document contemplated  
5 you may have future separate deals, though --

6 A. Yes.

7 Q. -- on bonuses?

8 Okay. Does anything in this employment  
9 agreement say that a separate bonus plan would have to be an  
10 amendment to the employment agreement?

11 A. No.

12 Q. Okay. And, in fact, this document, does it appear  
13 to refer to future separate deals?

14 A. No.

15 Q. The detailed bonus -- well, I realize it only  
16 covers the first calendar year. But with respect to talking  
17 about a future plan being provided, does it contemplate  
18 future deals?

19 A. Yes, it does.

20 Q. And as for getting your oral handshake agreements  
21 in writing, Brian Potashnik and Cheryl Potashnik, did they  
22 say they would do that?

23 MR. L. FRIEDMAN: Leading.

24 THE COURT: Overruled.

25 THE WITNESS: Multiple times. Many times.

1 Q. (By Ms. Gibson) Okay.

2 And as far as how long you were going to  
3 stay with -- stay despite the asset sale and not having a  
4 job, did -- did the Potashniks ever ultimately get  
5 everything out of you that they asked you to do?

6 A. Yes.

7 Q. Okay.

8 Did the Potashniks ever say to you, Jeff,  
9 stop, we don't have an agreement, you don't need to stay?

10 A. No.

11 Q. I'm talking about before the end of your work.

12 A. No.

13 Q. Okay.

14 Did they ever say, Jeff, you don't need to  
15 work so hard because we don't have a deal, we're not  
16 actually going to pay you the three-percent bonus or the  
17 annual bonuses?

18 MR. L. FRIEDMAN: Leading, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: No. Absolutely not.

21 Q. (By Ms. Gibson) Okay.

22 Everyone wanted this to be in writing, but  
23 did Brian Potashnik or Cheryl Potashnik ever say it had to  
24 be in writing to be enforceable?

25 A. No.

1 Q. Did they ever say before you had completed your  
2 work for them that all you were going to get was severance  
3 under the written agreement?

4 A. Never.

5 Q. That was brought up first after --

6 A. Yes.

7 Q. -- they got the work out of you? Okay.

8 Before you finished and did everything they  
9 asked you to, did they ever tell you, Jeff, you have no  
10 legal right before October 31st?

11 A. Cheryl -- Cheryl did in conversation a week  
12 before.

13 Q. Okay.

14 A. Saying that I had no legal right.

15 Q. Right, but when was your work done? Well,  
16 let's --

17 A. Per Brian, October 12th; per Cheryl's request,  
18 October 31st.

19 Q. Okay.

20 And what you're referring to where Cheryl  
21 says no legal rights, when did that conversation occur?  
22 Wasn't it around your birthday?

23 A. Yes.

24 Q. When was your birthday?

25 A. November 2nd.

1 Q. Okay, so that happened before or after --

2 A. After.

3 Q. -- they got everything out of you that they  
4 needed?

5 A. After.

6 Q. Okay.

7 A. After my employment.

8 Q. Before October 31st or the earlier date where  
9 Brian said you've done everything requested and you can take  
10 another job and you would get paid, before either of those  
11 dates, did they ever say during all of these conversations  
12 about annual bonuses and three percent, Jeff, you have no  
13 legal rights?

14 A. No.

15 Q. Instead, am I correct that -- what are some of the  
16 phrases they did say to you during meetings before October  
17 31st? What were they saying about your annual bonuses and  
18 your three percent?

19 A. That they were earned. That they were earned.  
20 Thank you. You worked -- you did above and beyond.

21 Q. Did they ever pull out --

22 A. It was accolades.

23 Q. Okay.

24 A. I never had any disagreements or -- only until  
25 this.

1 Q. Before October 31st, 2007, did they ever pull out  
2 your written employment agreement with Southwest Housing  
3 Management and say, Jeff, these provisions, you know, we're  
4 not going to give you anything?

5 A. No.

6 Q. Okay.

7 They only pulled out that document when?  
8 They only started talking about it when, just generally?

9 A. My -- my last day.

10 Q. Is that November 2nd?

11 A. Yes.

12 Q. Okay, let's talk about the timeline. Do you  
13 recall Larry Friedman asking you about the transcript  
14 telephone conversation?

15 A. Right.

16 Q. Okay. So -- and you can use your outline for  
17 dates with me, okay. This is not a memory test.

18 A. Okay.

19 Q. So get that if you need it.

20 When did Brian Potashnik say that you would  
21 get paid, whether you leave now or later, on both your  
22 annual bonuses and three-percent sale proceeds?

23 A. October 12th.

24 Q. Okay.

25 A. At his house in the courtyard.

1 Q. All right. Okay. And did he tell you your  
2 work -- whether or not your work was done as far as he was  
3 concerned?

4 A. Yes.

5 Q. Did he tell you whether or not all of the bonuses  
6 were fully earned?

7 A. Yes.

8 Q. Okay.

9 And then Cheryl Potashnik, what was the  
10 date all work was done per her request to you?

11 A. At the time the transition took place of the  
12 management of Pinnacle taking over, which was November 1st.  
13 So, essentially, my last day would have been October 31st.

14 Q. Okay, so October 31st.

15 And then what do you get the evening of  
16 November 1st after they got everything they wanted out of  
17 you?

18 A. Standard -- a standard severance agreement saying  
19 that any -- no monies will be paid after termination and I  
20 have no -- I'm paraphrasing -- I have -- they have no  
21 obligations to any of the agreements.

22 Q. Okay. And so that's when you get the separation  
23 agreement asking to release all rights. And then what's the  
24 date of the transcripts of the conversation --

25 MR. L. FRIEDMAN: Usually, we make these

1 boards after the witness testified.

2 MS. GIBSON: I'm scrolling --

3 MR. L. FRIEDMAN: Not before he testifies  
4 so he can get his answers from the board.

5 MS. GIBSON: I'm scrolling it up. I just  
6 accidentally did it too far.

7 MR. L. FRIEDMAN: Okay.

8 Q. (By Ms. Gibson) What's the date of the transcripts  
9 of conversations that you were talking about?

10 A. The vid -- or the call that I recorded?

11 Q. Yes.

12 A. November 2nd.

13 Q. Okay. So that conversation happens on the 2nd.  
14 And the separation agreement that they sent on the 1st, that  
15 asks you to release everything?

16 A. Yes.

17 Q. You see that?

18 And the only thing they put in here was  
19 wages earned through employee's termination date and some  
20 PTO, right?

21 A. Correct.

22 Q. So, as of November 1st, did you feel like the  
23 Potashniks had firmly --

24 MR. L. FRIEDMAN: Leading.

25 Q. (By Ms. Gibson) As of No -- when's the first time



1 you had a firm conviction in your heart that the Potashniks  
2 were reneging on their agreement?

3 MR. L. FRIEDMAN: Leading.

4 THE COURT: Overruled.

5 THE WITNESS: Without any conviction at  
6 all, November 1st, when I received that document.

7 Q. (By Ms. Gibson) Okay.

8 And then Mr. Friedman asked you about a  
9 December 11, 2007 Email from Cheryl Potashnik saying that  
10 you're not entitled to any bonuses after you're gone.

11 A. That's correct.

12 Q. Okay. And that was -- okay.

13 And so all of these events, whether  
14 suddenly pointing to your agreement, talking about we can't  
15 commit, you have no legal rights, giving you only PTO and  
16 some past-due wages, all of that happened after what -- did  
17 that -- all of that happened before or after you had done  
18 everything that both of them asked you for?

19 A. After I performed the --

20 Q. At any -- at any point before October 12, did  
21 Brian Potashnik tell you you didn't have a deal?

22 A. No.

23 Q. At any point prior to October 31, 2007, did  
24 Cheryl Potashnik ever say anything about you didn't have a  
25 deal?

1 A. No.

2 Q. Did they sit back and did they see that you were  
3 working hard?

4 A. They had to, yes.

5 Q. Did they acknowledge that?

6 A. Yes.

7 Q. They let you do it?

8 A. Absolutely.

9 Q. Did they know you expected to be paid both the  
10 annual bonuses and the three-percent deal?

11 A. Absolutely. And as outlined.

12 Q. And --

13 MS. GIBSON: Do you have a redacted of your  
14 D14?

15 MR. L. FRIEDMAN: No, but (inaudible) --

16 MS. GIBSON: Okay.

17 MR. L. FRIEDMAN: Want the redacted?

18 MS. GIBSON: Yeah.

19 Mark out whatever you want to mark out and  
20 I'll ask about that in a minute.

21 Q. (By Ms. Gibson) Okay. You recall Mr. Friedman  
22 saying that you were negotiating a new deal with Cheryl on  
23 severance, you were attempting to negotiate a deal?

24 A. On the unearned --

25 Q. After --

1 A. -- on the unearned bonuses.

2 Q. Right. After October 31st. Do you recall

3 Mr. Friedman talking to you about that?

4 A. Yes.

5 Q. Okay.

6 Who asked you to draft something up?

7 A. Cheryl.

8 Q. Okay. At that point, was your work done or not?

9 A. It was completed.

10 Q. Okay. And so if y'all managed to work something  
11 out after that, that would have been a new deal?

12 A. Yes.

13 Q. The \$600,000 that you had left for them or you  
14 calculate certain amounts, what did that represent at the  
15 time when you dropped that off with Brian in March of '07?

16 A. It represented the maximum earned or maximum bonus  
17 potential, annual bonus potential.

18 Q. Okay. Did you feel like you deserved it?

19 A. I did. I worked around the clock seven days a  
20 week.

21 Q. Okay.

22 Did you believe your deal was still in  
23 place at that time with Brian?

24 A. Absolutely.

25 Q. Okay.

1 And did Brian ever get back with you on the  
2 proposal, the 600,000?

3 A. No.

4 Q. Okay. And so had he said he would get back with  
5 you and let you know the final total amount on annual  
6 bonuses?

7 A. Yes. Then and --

8 Q. Okay.

9 A. -- and other occasions.

10 MS. GIBSON: Larry, I've got a redacted  
11 one. I didn't realize I redacted it.

12 MR. L. FRIEDMAN: Sorry.

13 MS. GIBSON: That's okay.

14 Q. (By Ms. Gibson) This is on your personal notes?

15 A. Yes, ma'am.

16 Q. This is Exhibit 63. This is also part of what you  
17 dropped off with Brian?

18 A. This is what I reviewed. Gave Brian a copy. We  
19 reviewed it at the restaurant.

20 Q. Okay.

21 A. And --

22 Q. So, as of 3 --

23 A. -- and then gave a copy to Cheryl as well.

24 Q. Okay.

25 So, as of 3/14/2007, in your notes you talk

1 about certain amounts that came from Brian's mouth,  
2 including extra bonuses were told of Fairway, 50,000;  
3 McKinney, 50,000; Vegas, 100- to 200,000?

4 A. Yes, ma'am.

5 Q. Do you see that?

6 A. Yes.

7 Q. Okay.

8 Now, on Vegas, Vegas would be the source of  
9 the money?

10 A. Yes.

11 Q. Okay.

12 But did Brian acknowledge to you that he  
13 owed you on additional bonuses 200,000, but he -- but he  
14 said he hoped to get a hundred- to 200- out of Vegas?

15 A. Yes.

16 Q. And on top of that, do you know in what you  
17 dropped off to him that he acknowledged that there were  
18 separate earned bonuses in there that would be coming to you  
19 from conversions that he would apply as well?

20 A. Yes.

21 Q. Okay. And so does that indicate or not indicate  
22 that he intended to pay you more than the 300,000 that are  
23 specifically mentioned?

24 A. Yes, more.

25 Q. And so for those numbers, what -- how did you get

1 another 50,000 and 50,000?

2 A. Well, with that attachment was the chart of the  
3 600,000 proposal; you know, the maximum proposal.

4 Q. During all of your discussions, though, what had  
5 y'all discussed as the lowest amount?

6 A. 400,000.

7 Q. The lowest amount, the minimum you would ever get.  
8 Not just these numbers. The minimum under the range.

9 A. Well, the lowest, according to the agreement,  
10 would be 50,000 a year.

11 Q. Okay, and is that where you're getting the  
12 additional hundred thousand, this two-year minimum on the  
13 dollars that he --

14 A. Yes.

15 Q. -- intended to pay you out of conversion on top of  
16 this?

17 A. Yes.

18 Q. And that was the oral deal out of Brian's mouth as  
19 of March of 2007?

20 A. Yes, prior to that meeting.

21 Q. And do you recall that Mr. Friedman accused me of  
22 giving you -- what's he call it? What does he call your --  
23 your notes? I can't think of it right now.

24 MR. SANFORD: Script.

25 Q. (By Ms. Gibson) Script.

1 A. Script.

2 Q. He accused me of giving you a script?

3 A. Right.

4 Q. Okay.

5 I am handing you what's been marked as  
6 Plaintiff's Exhibit 70. Do you recognize Exhibit 70 as  
7 notes that you personally took?

8 A. Yes.

9 Q. Or typed up, I guess?

10 A. Yes.

11 Q. And when did you type up these notes?

12 A. Shortly after my being finished. Actually, it was  
13 the 3rd of November through the 5th of November.

14 Q. Okay, sometime between November 3rd and November  
15 5?

16 A. Yes.

17 MS. GIBSON: Plaintiff --

18 A. It was three days.

19 MS. GIBSON: Plaintiff offers Exhibit 70.

20 THE COURT: Any objection?

21 MS. GIBSON: It is -- I already redacted  
22 it.

23 MR. DONOHUE: I was going to say I haven't  
24 looked through to see about redactions.

25 Subject to any further redactions, we'd

1 have no objection.

2 MS. GIBSON: Okay.

3 Plaintiff offers Exhibit 70.

4 THE COURT: It's -- 70 is admitted but not  
5 published until we can look at it in more detail.

6 MR. DONOHUE: Very good. Thank you,  
7 Your Honor.

8 MS. GIBSON: It is -- may I go ahead and  
9 portion publish --

10 THE COURT: Yeah.

11 MS. GIBSON: -- portions? Okay.

12 Q. (By Ms. Gibson) All right. And you see in the  
13 notes that you took shortly after the Potashniks plead to  
14 back out, you see you talked about during this time period  
15 Brian and I met at Cafe Express?

16 A. Yes.

17 Q. Okay. And you said what about what you said you  
18 would receive?

19 A. Three percent from the gross compensation from the  
20 sale transaction, less closing costs, brokerage fees,  
21 attorney fees related to the transaction, title fees, and  
22 other normal closing costs. And less any deductions of any  
23 compensation paid to any other employees, referring to  
24 corporate.

25 Q. Okay.



1 And when you -- you used -- you know, when  
2 you use different words in the last deduction, is there  
3 actually a different meaning?

4 A. No.

5 Q. What does it all mean? What's the last deduction?

6 A. That --

7 Q. What type of bonuses are being deducted, what type  
8 of compensation?

9 A. Oh, the retention stay or severance.

10 Q. Okay.

11 A. Whatever terminology we're giving to the corporate  
12 office.

13 Q. Okay.

14 And then during -- during that  
15 conversation, the two of you tried to run an estimate?

16 A. Yes.

17 Q. Okay.

18 A. Brian's very good with figures, I'm pretty good,  
19 and we ran through them.

20 Q. Okay. And the estimate was how much?

21 A. A million 20, based -- that was based off the LOI,  
22 which was 36 million. It actually kind of had the caveat of  
23 37 million. We were using -- ultimately, we brought it down  
24 to 34 million to get to that number, a million 20.

25 Q. Okay.

1 A. And that's based off 34 million.

2 Q. And then if you -- if we flip further here, you  
3 talk about something that happened on October 12th. And is  
4 that around the date that you were talking about?

5 MR. L. FRIEDMAN: What page?

6 MS. GIBSON: I'm sorry. Bates 37.

7 Q. (By Ms. Gibson) Is that what you were talking  
8 about when he said you could go?

9 A. Yes.

10 Q. Okay. And that you would get paid either way?

11 A. That's correct.

12 Q. Whether you left sooner or later?

13 A. Yes.

14 Q. Jeff, let's say one of the -- just as an example,  
15 let's say one of the teachers living in one of the apartment  
16 communities, she has an agreement for salary and a certain  
17 amount of bonus, okay. If she asks for more, does that mean  
18 she doesn't have a deal for her existing salary and bonus?

19 A. No.

20 Q. Let's talk about the final results on the  
21 three-percent deal. If the asset sale was a complete loss  
22 and there was no revenue to sellers, how much would you get?

23 A. Zero.

24 Q. Even though that was the case, though, did Cheryl  
25 and Brian Potashnik want to make sure, though, that there

1 was enough money for them personally? Is that what they're  
2 referring to in the November 2nd conversations in the  
3 transcript?

4 A. I believe so, yes.

5 Q. At one point you talked about a more firm  
6 commitment. Do you recall that?

7 A. Yes.

8 Q. Did you have a firm commitment on a handshake  
9 three-percent deal --

10 A. Yes, we did.

11 Q. -- even though you asked for something more firm?

12 A. Yes.

13 Q. Did you have a firm commitment from  
14 Brian Potashnik on at least some amount of annual bonus  
15 money?

16 A. Yes.

17 Q. And so on the percentage deal, other than attempts  
18 to add the wherefore, whereas, lawyer language, you can  
19 document that deal even if you don't know what the future  
20 is?

21 A. Oh, absolutely.

22 Q. Okay. And the only reason you couldn't is if you  
23 wanted to make sure you got -- an individual got what they  
24 needed first?

25 A. Yes.

1 Q. And Mr. Friedman had talked about the end date for  
2 your work being October 31, 2007?

3 A. Yes.

4 Q. And -- but when you reached the handshake  
5 agreement with Brian Potashnik on the three-percent,  
6 sale-proceeds-formula bonus, what was the anticipated close  
7 date for the sale?

8 A. April -- excuse me -- April, May of 2007.

9 Q. Okay. And did you clarify during your deposition  
10 that October 31, 2000 -- the October -- that October 31,  
11 2007, wasn't even something that was foreseeable at the time  
12 you and Brian made --

13 A. Correct.

14 Q. -- the handshake deal?

15 A. Correct. I'm not in the foreseeable. Not  
16 mentioned; not foreseen.

17 Q. Okay. Do you recall Mr. Friedman accusing you of  
18 going to work for another company in your last week of  
19 employment?

20 A. Yes.

21 Q. Okay, let's talk about that for a minute. If you  
22 take a look at either Plaintiff's 2 or Defendants' Exhibit  
23 4, do you see the moonlighting provision?

24 A. Yes.

25 Q. Simply requires you to be -- to not do anything

1 that would materially interfere with the performance of your  
2 duties.

3 A. That's what it says --

4 Q. Okay.

5 A. -- yes.

6 Q. Consulting -- consulting for American Housing  
7 Foundation, how much of that happened before you left?

8 A. A weekend.

9 Q. One weekend. Off the clock?

10 A. Off the clock.

11 Q. All right.

12 A. Touring local properties.

13 Q. Okay.

14 And Mr. Friedman then claimed that your own  
15 exhibit proved that you had gone. Do you remember that?

16 A. Yes.

17 Q. Let's take a look at the exhibit. This is Exhibit  
18 61, but I'm just going to ask you to look on the screen.  
19 You see it says time period is for services performed and  
20 rendered from January 1, 2008, to March 31, 2009?

21 A. Yes.

22 Q. On Line 4.

23 Okay. Mr. Friedman didn't point that part  
24 out?

25 A. Correct.

1 Q. And -- but the time frame is for unpaid wages for  
2 March 31, 2009, to April 7, 2009?

3 A. Correct.

4 Q. Okay. Mr. Friedman didn't point out that part  
5 either, did he?

6 A. No, sir -- no, ma'am.

7 Q. That's okay. You can call me sir.

8 And if you go to the next page, do you see  
9 there's a date, debt incurred, starting October 24, 2007?

10 A. Yes.

11 Q. Okay. And you see on one of these pages -- this  
12 is hard to read, but it talks about something that closed in  
13 October of 2007?

14 A. Yes.

15 Q. A wire transfer on 10/14/07?

16 A. Yes.

17 Q. Okay. What was that from AHF?

18 A. That was a hundred-unit property that was going  
19 through a complete rehab in Amarillo, an acquisition.

20 Q. Okay. Did they give you credit for that even  
21 though you weren't working there?

22 A. I wasn't working there. I wasn't doing anything  
23 with it. But being close to the start date, they gave that  
24 to me as a gift.

25 Q. Well --

1 A. A credit.

2 Q. -- it's -- they gave you credit on it?

3 A. They gave me credit because I'll be -- I would be  
4 working on it.

5 Q. Okay.

6 And if we back up on the claim form,  
7 it clarifies above, under basis for claim, that you are  
8 seeking wages, salaries, and compensation -- woops. Sorry.  
9 Your social is on there. I'll take that off. Unpaid  
10 compensation for services performed March 31, 2009, to April  
11 7, 2009?

12 A. Correct.

13 Q. Right?

14 Mr. Friedman didn't point that out either?

15 A. Correct.

16 Q. And you see that there is also a claim down here  
17 for wages, salaries, or commissions of a certain amount  
18 earned within 90 days before the filing?

19 A. Yes.

20 Q. Okay. And the filing is October 8, 2009?

21 A. Yes.

22 Q. Okay.

23 So as far as comp for actual work, was all  
24 of this after you left Southwest Housing?

25 A. Yes.

1 Q. Okay.

2 A. Absolutely.

3 Q. They just gave you credit for a deal because you  
4 were about to come over?

5 A. Yes. I believe it was October 31st.

6 Q. And by early October of 2007, had Brian already  
7 given you permission to go if you wanted?

8 A. On October 12th, yes.

9 Q. Okay. You remember Mr. Friedman talking about  
10 sole discretion?

11 A. Yes.

12 Q. Okay. But when -- whether it's sole discretion or  
13 not and regardless of what the standards are --

14 (Reporter sneezed)

15 MR. L. FRIEDMAN: Bless you.

16 Q. (By Ms. Gibson) -- did Brian --

17 MS. GIBSON: Sorry. Bless you.

18 THE WITNESS: Bless you.

19 Q. (By Ms. Gibson) Whether or not bonuses were  
20 discretionary and whether or not they got to set the amount,  
21 regardless of what the standards are for earning it, did  
22 Brian tell you he earned it -- you had earned it?

23 A. Yes.

24 Q. Okay. And did Brian give you some specific  
25 numbers that we just talked about, the Fairway, McKinney --



1 A. Yes.

2 Q. -- Vegas numbers? Okay.

3 And so even though they're sole discretion,  
4 has Brian, at that point, exercised his discretion?

5 A. Yes.

6 Q. Okay.

7 And regardless of what the standards are,  
8 regardless of company performance, regardless of financially  
9 how well the businesses were doing, did he tell you those  
10 bonuses were earned?

11 A. Yes.

12 MS. GIBSON: Your Honor, I thought I would  
13 be able to finish real quick.

14 THE COURT: You want to take a lunch break?

15 MS. GIBSON: Yeah, that's what I was  
16 thinking. I was hoping I could get done.

17 THE COURT: We'll take an hour and 10  
18 minutes for lunch, ladies and gentlemen. We'll see you back  
19 at 1:15.

20 (The jury exited the courtroom.)

21 (Lunch recess taken)

22 (The jury entered the courtroom.)

23 THE COURT: Welcome back. Good afternoon,  
24 ladies and gentlemen.

25 We'll continue with the trial.

1 Mr. Carpenter is the witness; Ms. Gibson is the attorney  
2 asking questions on redirect. And we'll go an hour and 10  
3 minutes, until about 2:25, before we take a break.

4 Ms. Gibson, if you'd pick up where you left  
5 off.

6 MS. GIBSON: Thank you.

7 Q. (By Ms. Gibson) Mr. Carpenter, do you recall  
8 Mr. Friedman saying that you still retain confidential  
9 information on the laptop as of today?

10 A. Yes.

11 Q. Okay. Let's talk about that for a minute.

12 I'm handing you a little notebook thing.  
13 Do you recognize the name on it?

14 A. Yes. TERIS.

15 Q. Okay. Who -- briefly, what did TERIS do in this  
16 case?

17 A. TERIS cloned the computer based on certain agreed  
18 upon (witness cleared throat) -- excuse me -- key words that  
19 both sides of counsel agreed upon.

20 MR. L. FRIEDMAN: I'm going to bet this is  
21 about to violate the limine, Judge.

22 THE COURT: Okay.

23 MS. GIBSON: What? I don't -- I don't know  
24 how.

25 MR. L. FRIEDMAN: I'm going to bet this --

1 Q. (By Ms. Gibson) And where --

2 MR. L. FRIEDMAN: -- is about to get into  
3 discovery matters.

4 THE COURT: Come over here.

5 (Sidebar conference held)

6 THE COURT: Vikki, the objection's  
7 overruled.

8 Q. (By Ms. Gibson) And after TERIS imaged that laptop  
9 based on the parties' chosen search terms, did both parties  
10 get a copy?

11 A. Yes.

12 Q. Okay. And as for the laptop itself, where has  
13 it been since this lawsuit started?

14 A. Primarily, under lock and key with my attorneys.

15 Q. Mr. Friedman asked you about going to ADR. Do you  
16 recall that?

17 A. No, I do not.

18 Q. Alternative Dispute Resolution?

19 A. Okay.

20 Q. Before filing suit?

21 A. Oh, okay. As part of the employment agreement?

22 Q. Right.

23 Let's talk about that for a moment. Did  
24 you -- in the telephone transcript on November 2nd, did  
25 Cheryl Potashnik practically invite you to go ahead and sue

1 if that's what you wanted to do?

2 A. Yes.

3 Q. And with respect to that provision of the  
4 agreement, had the Potashniks affirmatively informed you  
5 that they didn't intend to --

6 MR. L. FRIEDMAN: Leading, Your Honor.  
7 Suggesting the answer.

8 MS. GIBSON: Let me rephrase that.

9 Q. (By Ms. Gibson) Had the Potashniks repudiated the  
10 deal with you before that provision would have been  
11 triggered to go to ADR?

12 MR. L. FRIEDMAN: Still.

13 THE COURT: Overruled.

14 THE WITNESS: Yes.

15 Q. (By Ms. Gibson) Do you recall Mr. Friedman asking  
16 you about a provision in the written employment agreement  
17 talking about this is the entire agreement of the parties?

18 A. Yes.

19 Q. Okay. And you recall Mr. Friedman saying that the  
20 effective date of that agreement was in February of 2004?

21 A. Yes.

22 Q. Okay. As of February of 2004 -- or I'm sorry. As  
23 of the time the parties said that was their entire  
24 agreement, as of what date would that be the entire  
25 agreement?

1           A.    I believe their one date -- I think it was  
2           February 13; I'm not exactly sure -- was the -- on the  
3           first, second line on the front page of the '04. Both  
4           parties didn't sign until 2/25/04. I didn't start working  
5           until March 15th of '04.

6           Q.    Okay. And was one of those the effective date of  
7           when that was the entire agreement?

8           A.    I assume so, yes.

9           Q.    Okay. Did anything in that contract say this was  
10          the entire agreement all the way into the future forever?

11          A.    No.

12          Q.    And, in fact, did the agreement contemplate  
13          that there would be future separate deals --

14          A.    Yes, it did.

15          Q.    -- concerning --

16                        Do you recall Mr. Friedman asking you if  
17          Brian Potashnik said I am authorized to represent certain  
18          sellers in the asset sale?

19          A.    Yes.

20          Q.    Did he need to say those exact words to you?

21          A.    No.

22          Q.    Okay.

23                        What was your understanding of who owned  
24          every entity involved in this lawsuit?

25          A.    Brian Potashnik.

1 Q. What was your understanding as to whether Brian  
2 was an officer of each of the entities in this lawsuit who  
3 sold assets in the asset sale?

4 A. Brian Potashnik.

5 Q. And did you see that he was listed as agent for  
6 sellers in the purchase and sale agreement?

7 A. Yes, I did.

8 Q. Okay.

9 And what did he say about whether or not  
10 Cheryl Potashnik had blessed the three-percent deal?

11 A. That she agreed to it.

12 Q. Okay. And when -- when was that? When did he  
13 tell you that?

14 A. When I tried to renegotiate for five percent.  
15 Basically, the following day.

16 Q. And in connection -- Mr. -- who had you been  
17 informed, early on, mainly handled compensation issues?

18 A. I'm sorry. Would you mind repeating?

19 Q. Early on -- well, let me just do this. Remember  
20 Mr. Friedman used portions of your declaration?

21 A. Yes.

22 Q. Okay. And, of course, also in that -- and here  
23 you talk further about why all of the five defendants were  
24 parties to the three-percent deal?

25 A. Yes.

1 Q. Okay. And you say that was clear based on  
2 additional work you were to do and did do to benefit each of  
3 them --

4 A. Yes.

5 Q. -- in efforts to sell? Okay.

6 That's the Southwest Housing and the  
7 Potashniks --

8 A. Affordable Housing assets.

9 Q. Okay. And also your discussions with the  
10 Potashniks?

11 A. Yes, ma'am.

12 Q. Okay.

13 And, also, Mr. Potashnik was the highest  
14 level person at all of the entities, and you had been  
15 informed early on that he usually handled compensation  
16 agreements?

17 A. Yes.

18 Q. Who told you that he -- who told you that he  
19 usually handled compensation agreements?

20 A. Cheryl Potashnik.

21 Q. Okay. So did Brian Potashnik appear to have  
22 authority to make a deal on seller -- certain formula seller  
23 proceeds?

24 A. Yes, ma'am.

25 Q. And Mr. Friedman also played various clips from

1 your deposition?

2 A. Yes.

3 Q. Okay.

4 But you also remember various other points  
5 in your deposition that clarify these things. For example,  
6 when he said at least on December 11, 2000 --

7 MR. L. FRIEDMAN: Your Honor, I know she's  
8 not going to read from his deposition.

9 THE COURT: She's -- are you reading what  
10 Mr. Friedman introduced?

11 MS. GIBSON: No. No. I'm just showing  
12 that there are other portions --

13 THE COURT: Okay. You can ask him if he  
14 recalls and see if he needs his memory refreshed.

15 MS. GIBSON: Okay.

16 Q. (By Ms. Gibson) Do you recall saying that what the  
17 Potashniks said on December 11, 2007, was a lie that there  
18 was -- when they said there was no deal?

19 A. Yes.

20 MR. L. FRIEDMAN: Line and page, please.

21 MS. GIBSON: I'm sorry. 132 -- oh, this is  
22 in the 2010 volume. Let me know when you're there.

23 MR. L. FRIEDMAN: Do we have that?

24 MS. GIBSON: Okay.

25 MR. L. FRIEDMAN: Hold on.



1 MR. DONOHUE: 132?

2 MS. GIBSON: Yeah.

3 MR. L. FRIEDMAN: Your Honor, she can't  
4 impeach her own witness. She can just ask him the  
5 questions.

6 THE COURT: That's -- you're the one that  
7 asked for page and line. That's why I told her -- asked her  
8 if he remembers what he said, if she needs it to refresh his  
9 memory.

10 MR. L. FRIEDMAN: Okay.

11 MS. GIBSON: That's what I thought I was  
12 doing. Does he remember what he said --

13 THE COURT: That's what you were doing.  
14 Keep going.

15 MS. GIBSON: Okay.

16 Are y'all ready?

17 MR. L. FRIEDMAN: Yeah.

18 MS. GIBSON: Okay.

19 Q. (By Ms. Gibson) And do you remember in response to  
20 Mr. Friedman saying you just didn't have the deal on  
21 December 11th, would you agree with that, do you recall what  
22 you said?

23 A. Yes. I did not agree with that.

24 Q. Okay. Do you recall saying, no, we had a deal?

25 A. No, we -- yes, I recall we had a deal.

1 Q. Okay.

2 Do you recall whether or not you disagreed  
3 with the Potashniks' statement that the payments you were  
4 requesting would not be consistent with your employment  
5 contract?

6 A. Yes.

7 Q. What did you say?

8 A. That they could be modified orally and they still  
9 need to be discussed.

10 Q. Okay. And do you recall also saying her  
11 interpretation, I disagree?

12 A. I do.

13 MR. L. FRIEDMAN: Line and page, please?

14 MS. GIBSON: That was 136, 25 to 1 and 5.

15 And I'm moving to 159 to 10 to 17.

16 MR. L. FRIEDMAN: I'm sorry. 159, 17?

17 MS. GIBSON: Yes.

18 MR. L. FRIEDMAN: Thank you.

19 MS. GIBSON: Wait, 159, 10 to 17.

20 MR. L. FRIEDMAN: Okay.

21 Q. (By Ms. Gibson) And do you recall Mr. Friedman  
22 asking, Well, you had no deal for a bonus 'cause you  
23 couldn't get it in writing and you couldn't get Brian or  
24 Cheryl or Southwest Housing or anyone else to agree with it?  
25 Isn't that the truth?

1 Do you recall your answer?

2 A. I disagreed with that statement.

3 Q. And do you recall saying I disagree?

4 A. I disagree.

5 MS. GIBSON: And I'm now at Page 174, 18 to  
6 25.

7 (Pause)

8 MS. GIBSON: Are you there?

9 MR. L. FRIEDMAN: Yes.

10 Q. (By Ms. Gibson) And do you recall Mr. Friedman  
11 asking you, But the truth is nobody knew if Cheryl Potashnik  
12 or Brian Potashnik said, Jeff Carpenter, we have a deal?  
13 Isn't that the truth?

14 And do you recall exactly what you said to  
15 that answer?

16 A. I disagreed with that.

17 Q. Okay. Do you recall saying that is not the truth?  
18 We had a deal. We had a deal.

19 A. That's correct.

20 Q. Okay. And these are only a few examples?

21 A. Yes, ma'am.

22 MS. GIBSON: Pass the witness.

23 THE COURT: All right.

24 Mr. Friedman?

25 MR. L. FRIEDMAN: Sure. Just briefly.

RECROSS EXAMINATION

BY MR. L. FRIEDMAN:

Q. Mr. Carpenter, all of these examples from your deposition were examples when you disagreed with me when I was examining you, not Brian or Cheryl Potashnik, correct?

A. Questions that you asked, though.

Q. Questions I asked you, correct?

A. On behalf of the Potashniks.

Q. Yeah. These weren't examples of telling the Potashniks at the time of those conversations you're wrong, we have a deal?

A. I don't understand what you're saying.

Q. The passages your lawyer was referring to in your deposition was you telling me at the deposition you disagreed with my questions, correct?

A. In reference to the Potashniks and you representing the Potashniks as if they asked the question, yes.

Q. Yes. Correct. Thank you.

Number two, you keep saying that the Potashniks never denied your deal, right?

A. Correct.

Q. Well, if there wasn't any deal, they didn't have to deny it, correct?

A. Pardon me?

1 Q. If there was no oral agreements, they didn't have  
2 to deny there was an oral agreement, correct?

3 A. I had an oral -- I have an oral agreement --

4 Q. I know that's your contention, but that wasn't my  
5 question.

6 A. I don't understand your question. I'm sorry.

7 Q. Let me clarify it.

8 A. Thank you.

9 Q. If there were not two oral agreements, as you  
10 allege, the Potashniks didn't have to deny there were two  
11 oral agreements, correct?

12 A. I guess you could take that stance, yes.

13 Q. Okay.

14 And when you had the opportunity to  
15 confront the Potashniks in those two secretly recorded  
16 conversations with your two alleged oral agreements, you  
17 didn't confront them, correct?

18 A. I did not confront them. My goal and purpose was  
19 to --

20 Q. I'll take that -- I'll take that as an answer.

21 Even though your wife Vikki Carpenter told  
22 you to go get your deal recorded?

23 A. She did not say deal.

24 Q. She said go get your agreement on tape. It was  
25 her suggestion to record the Potashniks to get your deal on

1 tape. Isn't that true, sir?

2 A. She knew that --

3 Q. Sir --

4 A. -- we had a deal and the separation agreement --

5 Q. Sir, is it true --

6 A. -- was --

7 Q. -- or not? It's the only question.

8 A. The way you're presenting it is untrue.

9 Q. Okay.

10 Did Mrs. Potashnik make -- I'm sorry. Did  
11 Mrs. Carpenter make the suggestion that you go record your  
12 conversations with Brian and Cheryl Potashnik?

13 A. I believe she did.

14 Q. Well, you heard her testify she did.

15 A. Yes, but I'm not exactly clear if she did or  
16 didn't.

17 Q. Okay. So you don't believe --

18 A. We were talking.

19 Q. -- you don't believe her testimony?

20 A. That's not true.

21 Q. You were here when she testified.

22 A. That's not true. We --

23 Q. You accept her testimony when she testified from  
24 where you're sitting that she told you to go record these  
25 conversations?

1 A. She knew I was very upset.

2 Q. Sir, my only question is, Mrs. Carpenter told you  
3 to record conversations with Brian and Cheryl Potashnik?

4 A. Yes.

5 Q. And you followed her instructions, yes?

6 A. To find out why the separation --

7 Q. Sir, you followed her instructions. Yes or no?

8 A. Yes.

9 Q. Okay.

10 How many conversations with Brian Potashnik  
11 did you record?

12 A. As I stated before, just the one.

13 Q. How many conversations with Cheryl Potashnik did  
14 you record?

15 A. Just the one.

16 Q. Okay. And in those conversations you never  
17 confronted them with either one of your alleged oral  
18 agreements, correct?

19 A. We -- I referred --

20 Q. It's just a yes or --

21 A. -- and discussed the agreements.

22 Q. It's a yes-or-no question.

23 A. I did not bring up the agreements specifically.  
24 That was not the goal.

25 Q. Thank you.

1 Now, you own a laptop yourself?

2 A. Yes.

3 Q. You own a cell phone?

4 A. Yes.

5 Q. Did you own a cell phone in 2007?

6 A. I don't recall. No, I don't think so.

7 Q. Did you own --

8 A. Only the one that Brian gave me, yes.

9 Q. Did you have a cell phone on the days that you  
10 allege these oral agreements took place?

11 A. Yes.

12 Q. Okay. But even though you had a cell phone on  
13 those days and the day after, you didn't send a text to  
14 Brian or Cheryl or an Email to Brian or Cheryl saying thank  
15 you for this agreement or I'm confirming this agreement and  
16 here are the ingredients, one, two, three, four, five, six.  
17 You never did that, did you?

18 A. I did it in an attempt --

19 Q. Sir --

20 A. -- with the severance agreement --

21 Q. Sir --

22 A. -- that was requested.

23 Q. Sir --

24 A. That's --

25 MR. L. FRIEDMAN: Unresponsive, Your Honor.



1 THE COURT: Okay, listen to his question.  
2 Answer only his question, please.

3 Q. (By Mr. L. Friedman) I'm not trying to fight with  
4 you. I'm just saying you never sent a text to Brian and  
5 Cheryl when you made the agreement or a day afterwards  
6 confirming your agreement. Isn't that true?

7 A. Only in the separation agreement. That's true.

8 Q. And you never sent a text or Email to Brian and  
9 Cheryl when you made your first or second oral agreement;  
10 isn't that true?

11 A. Not detailing the agreement.

12 Q. All right. That's all I'm asking you.

13 And isn't it also true that you've never  
14 testified about your second oral agreement until today?

15 A. You'd know better than I. I'm not sure.

16 Q. I do know better than you, but the question is you  
17 never testified about that second oral agreement until  
18 today. Today was the first time you ever mentioned it;  
19 isn't that true?

20 A. Oh, the -- yes, the 400. Yes.

21 MR. L. FRIEDMAN: I have nothing further,  
22 Your Honor.

23 THE COURT: All right. Thank you.

24 Ms. Gibson?

25 MS. GIBSON: Plaintiff rests.

1 THE COURT: You're passing this witness,  
2 though?

3 MS. GIBSON: Oh, yeah.

4 THE COURT: Okay.

5 Thank you, Mr. Carpenter.

6 (End of proceedings)

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1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Vikki L. Ogden, Official Court Reporter in and for  
4 the County Court at Law Number 5 of Dallas County, State of  
5 Texas, do hereby certify that to the best of my ability the  
6 above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the parties  
9 to be included in the Reporter's Record, in the above-styled  
10 and -numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that the total cost for the  
13 preparation of the Reporter's Record is \$939.50 and will be  
14 paid by Friedman & Feiger, LLP.

15 WITNESS MY OFFICIAL HAND this the 27th day of February,  
16 2018.

17  
18  
19 /S/ Vikki L. Ogden

20 VIKKI L. OGDEN, Texas CSR# 6309  
21 Official Court Reporter  
22 Dallas County Court at Law No. 5  
23 600 Commerce Street, Floor 5  
24 Dallas, Tx. 75202  
25 (214)653-6443  
Certification Expires: 12/31/18

REPORTER' S RECORD (EXCERPT)

VOLUME 8 of 14

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
04/29/2019 6:14:22 PM

Trial Court Cause No. CC-08-02072-E

JEFFREY W. CARPENTER,

) IN THE DALLAS COUNTY  
) Clerk

Pl a i n t i f f ,

VS

) COURT AT LAW NO. 5

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC. , ET AL,

Defendants.

) DALLAS, TEXAS

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TRIAL ON THE MERITS

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On the 30th day of January, 2018, the following proceedings came on to be heard within the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the HONORABLE MARK GREENBERG, Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.

APPEARANCES:

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(469)361-9111  
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-AND-

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SBN 05989380  
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(214)780-5138  
Appellate Attorney for Defendants

ALSO PRESENT: Steve Page, A/V Technician

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P R O C E E D I N G S

January 30, 2018

THE COURT: Let me see you on the side over here first.

(Sidebar conference held)

THE COURT: Plaintiff's not resting. We're calling a witness out of order.

All right.

(The witness entered the courtroom.)

THE COURT: Mr. Goldstein, if you'd come all the way up here.

Mr. Friedman, is this your witness?

MR. J. FRIEDMAN: Yes, Your Honor.

THE COURT: Okay. If you'd go ahead and call your witness.

MR. J. FRIEDMAN: I call Mr. Goldstein.

THE COURT: All right.

Mr. Goldstein, if you'd come from all the way over here. Just have a seat back here.

MR. L. FRIEDMAN: For the record, Your Honor, I was Mr. Friedman first.

THE COURT: There's a passel of Mr. Friedmans.

Just have a seat right here.

This next witness, Mr. Goldstein, was

1 already sworn in. We swore him in outside your presence,  
2 but his testimony is under oath just like all the witnesses.

3 Whenever you're ready.

4 AARON GOLDSTEIN.

5 having been previously sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. J. FRIEDMAN:

8 Q. Good afternoon, Mr. Goldstein. My name's  
9 Jason Friedman.

10 We've never spoken before; is that correct?

11 A. No.

12 Q. And you understand you're a witness in this case,  
13 correct?

14 A. Yes.

15 Q. And were you contacted by plaintiff's counsel,  
16 Ms. Gibson?

17 A. Yes.

18 Q. How many times were you contacted by her?

19 A. I believe it was just once. On a Friday, the day  
20 I got subpoenaed. I believe so.

21 Q. And what -- what was that conversation?

22 A. She wanted to know if I recalled a conversation I  
23 had with Jeff or she said I had with Jeff in his backyard  
24 when I was doing some landscaping at their house.

25 Q. And did you remember the conversation?



1           A.    No, I did not. She said it was about 10 or 11  
2 years ago. There's no way I can recall that.

3           Q.    And what did she tell you happened?

4           A.    She asked if I recalled congratulating Jeff on the  
5 sale of the company. But I told her, I'm sorry, I don't  
6 recall that. If I did it, you know, I don't recall that.

7           Q.    Was that it? Was that all you told Ms. Gibson?

8           A.    I told her something that was that important I  
9 felt should have been written down. I'm sure it was in  
10 writing somewhere or an Email, if we had Email back that  
11 long ago. And she said, no, there wasn't anything in  
12 writing. And I just think something that important would  
13 have been. And I think that was the extent of it. We  
14 talked only for a few minutes.

15                   I asked her if she was going to depose me  
16 to find out if I recalled anything. And she said, no, that  
17 I just have -- I'd go as a witness and I'd have to show up  
18 in court.

19           Q.    All right. Thank you for your time.

20                   MR. J. FRIEDMAN: I'll pass the witness.

21                   THE COURT: All right.

22                   Ms. Gibson.

23                   CROSS-EXAMINATION

24           BY MS. GIBSON:

25           Q.    Mr. Goldstein, are you aware that oral agreements

1 are enforceable in Texas?

2 A. I think you told me that.

3 MR. J. FRIEDMAN: I object, Your Honor.

4 MS. GIBSON: Okay.

5 MR. J. FRIEDMAN: Calls for a legal  
6 conclusion.

7 THE COURT: It does, but --

8 MS. GIBSON: He answered. I'm done.

9 THE COURT: Okay. Fair enough. You pass  
10 the witness?

11 MS. GIBSON: Pass the witness.

12 THE COURT: Okay.

13 Thank you, Mr. Goldstein.

14 THE WITNESS: Thank you.

15 THE COURT: Or did you have anything?

16 Mr. Friedman, any redirect?

17 MR. J. FRIEDMAN: Yes, a couple questions,  
18 Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. J. FRIEDMAN:

21 Q. Was Ms. Gibson aggressive when trying to put words  
22 in your mouth?

23 A. No.

24 Q. No?

25 A. No. She just wanted to know if I recalled the

1 conversati on.

2 Q. Okay. Thank you.

3 THE COURT: Very good.

4 Pass the witness? All right, thank you.

5 Ladies and gentlemen, we'll take about a  
6 20-minute break, maybe 25 minutes. We'll see how long. And  
7 we'll take a 20-minute break.

8 (The jury exited the courtroom.)

9 THE COURT: Y'all come on up.

10 Vikki, let's get on the record that  
11 plaintiffs rest. Is that right, Ms. Gibson?

12 MS. GIBSON: Yes.

13 THE COURT: All right.

14 (Lengthy pause)

15 THE COURT: We're off the record right now.

16 (Off the record)

17 THE COURT: We're on the record now.

18 THE REPORTER: Okay.

19 **DEFENDANTS' MOTIONS FOR DIRECTED VERDICT**

20 MR. L. FRIEDMAN: Thank you, Your Honor.

21 Let's address a couple of things that are  
22 obvious. I'd like to move for a directed verdict in favor  
23 of Cheryl Potashnik. The witness testified that he had no  
24 agreement with Cheryl Potashnik, period. I don't think  
25 there's any evidence that there was any agreement with

1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Vikki L. Ogden, Official Court Reporter in and for  
4 the County Court at Law Number 5 of Dallas County, State of  
5 Texas, do hereby certify that to the best of my ability the  
6 above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the parties  
9 to be included in the Reporter's Record, in the above-styled  
10 and -numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that the total cost for the  
13 preparation of the Reporter's Record is \$310.00 and will be  
14 paid by Friedman & Feiger, LLP.

15 WITNESS MY OFFICIAL HAND this the 16th day of October,  
16 2018.

17  
18  
19 /S/ Vikki L. Ogden

20 VIKKI L. OGDEN, Texas CSR# 6309  
21 Official Court Reporter  
22 Dallas County Court at Law No. 5  
23 600 Commerce Street, Floor 5  
24 Dallas, Tx. 75202  
25 (214)653-6443  
Certification Expires: 12/31/18

REPORTER' S RECORD

VOLUME 10 of 14

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
04/29/2019 6:14:22 PM

Trial Court Cause No. CC-08-02072-E

JEFFREY W. CARPENTER,

) IN THE DALLAS COUNTY  
) Clerk

Pl a i n t i f f ,

VS

) COURT AT LAW NO. 5

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC. , ET AL,

Defendants.

) DALLAS, TEXAS

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TRIAL ON THE MERITS

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On the 31st day of January, 2018, the following proceedings came on to be heard within the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the HONORABLE MARK GREENBERG, Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.

APPEARANCES:

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Attorney for Plaintiff

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(214)780-5138  
Appellate Attorney for Defendants

ALSO PRESENT: Steve Page, A/V Technician

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1 case with them at this point.

2 We thank you.

3 JUROR NUMBER 7: Thank you very much.

4 MR. DONOHUE: Thank you for your service.

5 MR. SANFORD: Thank you.

6 MS. GIBSON: Thank you.

7 (Off the record)

8 (Recess taken)

9 (The jury entered the courtroom.)

10 THE COURT: Welcome back and good morning,  
11 ladies and gentlemen.

12 We're entering the final stage of the  
13 trial. The remaining portions of the trial are the Court's  
14 charge and the closing arguments.

15 The Court's charge is a written document.  
16 It contains legal instructions and definitions. And the  
17 legal instructions and definitions give you guidance on  
18 answering the jury questions. It's your answers to the jury  
19 questions that will constitute the verdict. And after you  
20 return a verdict I take your verdict and reduce that to a  
21 judgment, and it's the judgment that closes the case.

22 As you can see, the Court's charge is 23  
23 pages for this particular case. What we're going to do  
24 first today is go over the first 21 pages of the Court's  
25 charge. That's all the instructions, definitions, and jury



1 questions.

2 Then we'll have the closing arguments.  
3 Each side will have 45 minutes for closing argument. And  
4 then after the closing arguments we'll go over the last two  
5 pages of the Court's charge. One page has instructions for  
6 presiding juror and the other is called the verdict  
7 certificate page, where you certify your verdict after you  
8 answer the jury questions.

9 So the first thing we're going to do is go  
10 over the first 21 pages of the Court's charge. The rules of  
11 court require me to read the charge aloud to you. That way  
12 it becomes part of the record and also gives me assurance  
13 that you've heard the instructions and definitions at least  
14 once. And it also allows you to hear the jury questions  
15 before you hear the closing arguments so that you'll put  
16 into some perspective what the closing argument is.

17 So we're going to start on Page 1 at the  
18 top of the page where it says Ladies and gentlemen of the  
19 jury.

20 (Charge read aloud)

21 THE COURT: And then you'll see on Page 22  
22 is the page of instructions for the presiding juror and  
23 Page 23 is the verdict certificate page, and we'll go over  
24 those two pages with you after the closing arguments.

25 We'll now turn to the closing arguments.

1 The closing arguments, like the opening statements in the  
2 case, are not evidence. They're argument. The closing  
3 arguments provide an opportunity for the attorneys to argue  
4 to you what they believe the evidence showed.

5 The attorneys have 45 minutes to present a  
6 closing argument. By rule of court, the attorney for the  
7 plaintiff, the party with the burden of proof, gets to go  
8 first and last. What that means is that Ms. Gibson, who  
9 represents Mr. Carpenter, will break up her time. And this  
10 is an approximation: She'll first go -- she'll break up her  
11 45 minutes, approximately 25 minutes and 20 minutes. So you  
12 will hear first from her the 25 minutes.

13 Then we're going to take a break. And then  
14 when you come back from the break we'll hear from  
15 Mr. Friedman or Mr. Donohue for up to 45 minutes. After  
16 that we'll go back to Ms. Gibson for her rebuttal, which  
17 will be approximately 20 minutes. After that we'll go over  
18 the last two pages of the Court's charge. After that we'll  
19 ask that you retire to the jury room.

20 So, again, the next thing we're going to do  
21 is the first portion of plaintiff's closing argument  
22 presented by Ms. Gibson, and should go about 25 minutes.  
23 And after that we'll take a break.

24 Is everyone okay going 25 minutes?

25 MS. GIBSON: Your Honor, before we begin,

1 may we move the flip charts?

2 THE COURT: Sure.

3 MS. GIBSON: Can everybody see? Can y' all  
4 see?

5 Larry, can you see?

6 MR. L. FRIEDMAN: Yes, ma'am.

7 MS. GIBSON: Okay.

8 THE COURT: Did you want a warning at 25  
9 minutes or before 25 minutes?

10 MS. GIBSON: I'm sorry?

11 THE COURT: Did you want a warning at 25 or  
12 before 25?

13 MS. GIBSON: Before, please.

14 **PLAINTIFF'S CLOSING ARGUMENT**

15 MS. GIBSON: Good morning.

16 In -- in a little while you-all will go  
17 into the deliberation room to decide this case and you will  
18 have three jobs. Your first job will be to answer the  
19 questions that Judge Greenberg gives you. You're second job  
20 will be to make sure all other jurors are following the law.  
21 If another juror does not follow the law during  
22 deliberations, you have the right to tell the bailiff so  
23 that he can inform the judge. And your third job in  
24 deliberations will -- to be able to explain why you feel the  
25 way you do when answering -- when answering the questions in

1 the charge. So, during my closing, I'd like to give you  
2 some ways to help you do that.

3 First, recall that the rules we are here  
4 for are the business financial safety rules. Businesses  
5 must live up to their agreements with those who have lived  
6 up to theirs to protect businesses, workers, and families  
7 from harm. Safety Rule Number 2, those who operate  
8 businesses in Texas must honor Texas law about enforcement  
9 of oral agreements, especially handshake agreements, to  
10 protect businesses, workers, and their families from harm.

11 In this case everyone agrees that in Texas  
12 oral agreements can be enforceable. You've heard from  
13 Cheryl Potashnik that if it's a handshake and the parties  
14 agree, that's an agreement. The Court has also instructed  
15 you that despite the language in the written employment  
16 agreement with Southwest Housing Management that that  
17 agreement -- oops, too far.

18 THE COURT: I think you turned up -- you  
19 should turn on the light here. There you go.

20 MS. GIBSON: The written agreement may be  
21 modified by a later oral agreement, even though it provides  
22 that it can be modified only in writing. That is Texas law  
23 that supports oral handshake deals.

24 You remember talking in jury selection  
25 about some of the bigness -- biggest commitments that we

1 make in life are oral, and this case will be about whether  
2 we put the honor back in a handshake deal. You will decide.

3 In some of the beginning instructions from  
4 the Court, I'd like to talk about a few of those. One is  
5 preponderance of the evidence. The definition explains that  
6 this is the greater weight of the credible evidence  
7 presented in the case. If you do not find that a  
8 preponderance of the evidence supports a yes answer, then  
9 answer no. Preponderance of evidence is not measured by the  
10 number of witnesses and number of documents.

11 But, importantly, at the end the Court has  
12 summarized what preponderance of evidence means. In sum,  
13 it just means that you must find that the fact or the  
14 answers to the question is more likely true than not true.  
15 What does that mean? We make decisions based on more likely  
16 true than not true every day. It comes down to what you  
17 feel in your gut. If you feel probably this happened, that  
18 is enough to meet the burden. Although the burden is only  
19 more likely true than not true, however, we believe we will  
20 show that we have shown you much more than needed to meet  
21 that burden that something probably happened.

22 Additionally, you're entitled to consider  
23 circumstantial evidence. In fact, in oral-agreement cases  
24 that is generally how -- always how these cases are decided.  
25 All you need to do is look -- you may find a fact if it can

1 be fairly and reasonably inferred from other facts. This is  
2 akin to having a puzzle that has a missing puzzle piece or  
3 two missing puzzle pieces. You can see how everything fits  
4 by what -- the facts surrounding it.

5 And we also use this type of evidence every  
6 day. For example, when you-all came up for jury selection I  
7 didn't see you come in downstairs. I wasn't there, I didn't  
8 see it, but I know reasonably that you-all went through a  
9 metal detector and security to get inside because I know the  
10 program and the policy in place in the courthouse. That's  
11 an example of how we reasonably infer facts every day, even  
12 when someone wasn't there to witness.

13 Question 1, Did Jeff Carpenter and  
14 Southwest Housing Management agree to pay annual bonuses to  
15 Jeff Carpenter covering the period from March 15, 2005,  
16 through March 15, 2007? You saw the instruction on  
17 authority and apparent authority and vice principal. All of  
18 those instructions go to something fairly simple; and that  
19 is, Brian Potashnik, who was the owner of Southwest Housing  
20 Management, he was the president of Southwest Housing  
21 Management, and he was a director of Southwest Housing  
22 Management. And the Secretary of State records are in the  
23 exhibits if anyone wants to check. He had the authority to  
24 enter deals on behalf of that company.

25 He is -- you don't need authority, apparent

1 authority, and vice principal to find that he had the power  
2 to act. You only need one. And the easiest way to answer  
3 this question is that Brian Potashnik was a corporate  
4 officer. That means that what Brian Potashnik says and the  
5 deals he makes are the acts of the company he is speaking  
6 for; here, Southwest Housing Management.

7 Now, was there a deal for the annual  
8 bonuses after year one? Take a look back at the employment  
9 agreement. From day one, the agreement contemplates -- why  
10 does this -- why is this light not coming on?

11 THE COURT: Rick, will you check that  
12 background light?

13 MS. GIBSON: It says back light on.

14 From day one, the parties contemplated that  
15 there might be future deals when this agreement was signed.  
16 First of all, it contemplated that at some point  
17 Jeff Carpenter might be employed by affiliates of the  
18 company. That would mean at some point he might be doing  
19 work for Affordable Housing Construction and for the  
20 development arm of the company.

21 Thank you so much.

22 Second, when it comes to the bonuses, the  
23 original agreement only covered the first calendar year with  
24 a range between a minimum discretionary bonus of 50,000  
25 upward to, potentially, 200,000. But from the beginning the

1 agreement contemplated that the parties would later agree as  
2 to future bonuses. In other words, there would be -- they  
3 contemplated from day one that there could be a separate  
4 future deal. Although no bonus plan was actually provided  
5 in writing, as the agreement required, Brian Potashnik and  
6 Jeff Carpenter discussed bonuses after year one orally.

7 Additionally, you may conclude that the  
8 oral deal on bonuses was either a separate oral deal or that  
9 it modified this contract. You decide. Either way, you get  
10 to the same result because the original contract only  
11 covered bonuses in the first year and certain other items  
12 that are not at issue in this case. It did not cover the  
13 three-percent deal. Certainly, no asset sale was  
14 contemplated at that time, and bonuses after year one were  
15 orally discussed and agreed to with Brian Potashnik.

16 You heard the testimony that  
17 Brian Potashnik and Jeff Carpenter continued to use the same  
18 range, the 50,000 to 200,000, in their discussions. They  
19 continued to use 50,000 as the minimum, and they did this  
20 orally. And recall that things -- that's how things were  
21 done here initially as far as orally.

22 Initially, for example, the advance on  
23 bonus of \$50,000, that advance was given before the bonus  
24 was due; and, yet, there was no written modification to the  
25 agreement. That was handled orally.



1 As another example, recall that  
2 Cheryl Potashnik believed that Jeff got a raise at some  
3 point. And although it wasn't truly a raise, she thought it  
4 was; and that was done orally without any written  
5 modification to the original employment agreement.

6 With respect to the agreement with  
7 Brian Potashnik, that is in Exhibit 63. These are notes of  
8 a conversation with Brian Potashnik on March 14, 2007. And  
9 here they discuss earned bonuses and dollars that were to  
10 come from the -- from conversions to be applied to earned  
11 bonuses. Now, he doesn't say a number there, but their  
12 discussions were that 50,000 would be the minimum. And then  
13 he talked about extra bonuses out of Fairway and 50,000;  
14 McKinney property for 50,000; and Vegas between 100- and  
15 200,000. Now, on the Vegas property, Brian Potashnik is  
16 acknowledging that he believes Jeff Carpenter has earned  
17 200-, but hopes to fund that from a deal on Vegas  
18 properties.

19 And from that -- and that's Exhibit 63 --  
20 the numbers are -- this is not for year one. But in year  
21 two, the 50,000 minimum; year three, 50,000 minimum. And  
22 then the total of the numbers that came from  
23 Brian Potashnik's mouth in the prior exhibit, 50,000,  
24 50,000, and 200,000, totals 400-.

25 It is undisputed that Jeff Carpenter was

1 not paid those bonuses. So, with respect to failure to  
2 comply with the agreement, the answer is yes. And with  
3 respect to the damages question the answer is 400,000.  
4 Again, taken from what Brian Potashnik agreed with  
5 Jeff Carpenter in March of 2007 was already earned and owed  
6 at that point.

7 With respect to Question 4, this is -- this  
8 is the three-percent deal, which is a separate oral deal, or  
9 you can find that it orally modified the original agreement.  
10 You decide.

11 Again, the instruction is that the written  
12 agreement with Southwest Housing Management may be modified  
13 later, even though it provides that it can only be modified  
14 in writing.

15 The parties involved in the asset sale were  
16 all people for whom or entities for whom Brian Potashnik was  
17 a vice principal, because he was an officer of each of them  
18 and they were all sellers in the asset sale. And these are  
19 Affordable Housing Construction, Southwest Housing  
20 Development, Southwest Housing Management, and  
21 Brian Potashnik. They are all listed as sellers in the  
22 attachment to the purchase and sale agreements. Brian had  
23 the power to bind all of them to promise three percent of  
24 certain -- of certain asset-sale proceeds pursuant to the  
25 formula.

1 Now, one -- in addition, we know that  
2 the -- we know from the PSA that the sellers are listed on  
3 the schedule.

4 Now, Jeff was to stay on as long as needed.  
5 There's a timeline, however, on what is as long as needed.  
6 What did that mean? Recall that originally closing was  
7 anticipated. The specific agreement was struck on October  
8 13th, 2006. It's undisputed that at that time the closing  
9 was anticipated for spring or summer of 2007. So,  
10 originally, as long as needed was anticipated to be through  
11 closing the following spring or summer.

12 Then at one point there was an indication  
13 that JC, Jeff Carpenter, may be picked up for transition.  
14 And that's just the period of time after the sale has  
15 happened when someone stays on temporarily to make sure  
16 that the purchaser has everything they need and that things  
17 are going smoothly. However, ultimately, as long as needed  
18 ended up being, Brian says, on October 12, 2007, that Jeff  
19 can leave and get paid either way on annual bonuses and  
20 three percent. His work is done.

21 Cheryl Potashnik asked him to stay through  
22 transition to new management with the purchaser, and that  
23 date is October 31st. So, as long as needed changed over  
24 time and ultimately ended up being through October 31, 2007;  
25 because the next day, on November 1st, the management

1 transferred to the purchaser and his work was done. Though,  
2 Brian said that his work was done on October 12th, by  
3 October 12th of '07.

4 With respect to an agreement, if somebody  
5 asks how do we know there was actually an agreement, we know  
6 from undisputed testimony that there was a stay program in  
7 place. The only person who denies that there was a stay  
8 program in place is Brian Potashnik. Brian Potashnik  
9 contradicted Cheryl Potashnik's testimony that before they  
10 sold the business they considered incentives to get  
11 employees to stay. It was important for continuity and  
12 there was also a criminal investigation going on, which  
13 meant they needed people to stay.

14 So, imagine a want ad and how difficult  
15 it might be for them to get a replacement that late in the  
16 day with criminal proceedings going on. The ad would  
17 essentially call for someone who was highly qualified to  
18 come on as the company is about to sell its assets and while  
19 the company is being investigated criminally and the  
20 criminal investigation is all over the news. That's another  
21 reason they needed them to stay.

22 Brian Potashnik denies there were bonuses  
23 with anyone. He consistently says, Never happened.  
24 Brian Potashnik's credibility is at issue here. Why else  
25 was there an agreement?

1                   Jeff Carpenter turned down a job with  
2                   higher pay. You heard Jeff Richards, who testified by  
3                   video, say that they wanted to hire Jeff immediately but  
4                   Jeff stayed for months because he was expecting large  
5                   compensation for -- with his current employer and he might  
6                   risk losing that if he left.

7                   We also know that Jeff participated in the  
8                   program, stay and pay. Or whether you call it severance,  
9                   whether you call it stay bonus, it all means the same thing.

10                  You heard from Keith Jones. And although  
11                  accused of making up that language, Exhibit 52 and others  
12                  talk about Jeff's own participation in the stay-and-pay  
13                  incentives and the stay plan. Jeff Carpenter was actually  
14                  helping decide stay bonuses for people lower than his level.

15                  To believe that Jeff Carpenter -- there was  
16                  no agreement made with him when he was also part of the  
17                  program in setting those bonuses, you would have to believe,  
18                  for example, that someone paid all of their first string  
19                  sports team but didn't want to pay, didn't make an agreement  
20                  with one of their starting quarterbacks.

21                  Also, in May 2006, when Brian Potashnik  
22                  announces the sale, at this point there's no number. But  
23                  you heard from Deepak Sulakhe say that he heard from Brian  
24                  that Jeff Carpenter might not have to work again if the  
25                  transaction works out. That explains references. And those

1 are just a few examples of how we know there was an  
2 agreement.

3 With respect to the damages on that  
4 agreement, it's undisputed, of course, on violation that he  
5 was not paid. You have the calculation from the closing  
6 documents: Net sale proceeds to seller after closing  
7 amount; deducted the amount of bonuses paid to other  
8 employees; total bonuses paid out at sale were approximately  
9 2.1 million; and the damages answer on the three-percent  
10 formula is \$926,970.

11 With respect to the question -- and,  
12 importantly, when you are answering these questions we are  
13 going to ask you to say the same number for several  
14 questions, but you don't need to worry about whether there  
15 will be a double recovery. Jeff Carpenter can only recover  
16 one amount one time, but that is handled with the Court  
17 after you render your verdict.

18 You will be asked about compensable work in  
19 connection with the asset sale, whether Jeff rendered  
20 valuable services. The point of those questions is if  
21 someone ends an agreement, ends an agreement early, or if  
22 you find there was no agreement, if Jeff Carpenter performed  
23 valuable services, he can still get compensation.

24 One question is excluding the asset sale  
25 happened. This is just annual bonuses for working harder.

1 The other question is his services in making the asset sale  
2 happen, and that goes to the three-percent deal. The  
3 reasonable value of that is what Brian Potashnik said it  
4 was; originally, about \$1,020,000. But we've reduced that  
5 to be the same as the amount for the original agreement.  
6 And the valuable services he performed was that he stayed.  
7 He stayed as long as needed.

8 With respect to joint -- the question on  
9 joint enterprise, this is talking about the asset sale. And  
10 the answer is yes for each defendant. They had an  
11 agreement. It was expressed.

12 The agreement included sharing costs,  
13 it included sharing profits, and it included sharing losses.  
14 For example, it expressly has them share in operating  
15 deficits, it expressly has them share in the profits, and  
16 they also split the costs. They split the cost 50-50. So  
17 that we know, had this been a total loss, which it wasn't,  
18 they would have expressly shared in those losses.

19 THE COURT: You have about three minutes  
20 left in your first 25.

21 MS. GIBSON: Okay.

22 With respect to the question on joint  
23 venture, this is also in connection with the asset sale.  
24 Affordable Housing Construction, Southwest Housing  
25 Development, Southwest Housing Management, and

1 Brian Potashnik are all listed as sellers on the schedule to  
2 the purchase and sale agreement. All of them had an  
3 agreement that we just talked about that had the same  
4 interest. That was to get the asset sold to a purchaser.

5 They had an agreement to share profits, the  
6 agreement to share losses that we just went over, and a  
7 mutual right of control or management of the venture because  
8 Brian Potashnik was the owner, officer, and director of all  
9 these three companies. He is the one who controlled each  
10 one.

11 And, finally, noted on the timeline, 10/12  
12 is when Brian says Jeff will get paid whether he leaves now  
13 or later. That's on both agreements. The work's done as  
14 far as he's concerned.

15 As of October 31st, all work is done for  
16 Cheryl Potashnik due to the management transition to seller.  
17 And then, after the defendants got everything they wanted  
18 from Jeff and all of his work is done, that is the first  
19 time they sent a separation agreement asking him to release  
20 all his rights for far less, pennies on the dollar, as to  
21 what they had agreed to with Brian Potashnik. And it is  
22 only after that, in transcripts of conversations, that they  
23 are saying Jeff Carpenter has no legal rights. At no time  
24 were words like that said until the defendants got  
25 everything they needed.



1 And, finally, they deny the deal and say  
2 the written agreement prevents any bonuses to be paid in  
3 December of that year.

4 Thank you.

5 THE COURT: All right. You conclude your  
6 argument?

7 Ladies and gentlemen, we'll take our  
8 morning break. We'll take a 15-minute break. We'll see you  
9 at 15 minutes -- about 10:43.

10 (The jury exited the courtroom.)

11 (Recess taken)

12 THE COURT: We're on the record but outside  
13 the presence of the jury. Mr. Hale wanted to put an  
14 objection to Ms. Gibson's closing argument on the record.

15 DEFENDANTS' OBJECTION AND MOTION FOR MISTRIAL

16 MR. HALE: Yes, Your Honor.

17 On behalf of all defendants, we object to  
18 the reference to it being in the news or all over the news  
19 that there was an FBI investigation into Southwest Housing  
20 or any of the other defendants. We believe that it  
21 encourages -- or it does encourage the jury to consider  
22 evidence that's outside the record. It's prejudicial to a  
23 substantial right of the defendants to have the case tried  
24 only on the evidence before them. And by making references  
25 to the FBI investigation or the news is highly inflammatory

1 and it encourages the jury to decide the case on an  
2 emotional rather than on a logical basis. And for that  
3 reason we ask for an instruction to disregard any references  
4 to the FBI investigation or it being in the news -- I'm  
5 sorry -- just to the FBI investigation being in the news and  
6 also ask for mistrial.

7 COURT'S RULING

8 THE COURT: Okay. And both those are  
9 denied.

10 (Off the record)

11 DEFENDANTS' OBJECTION

12 MR. HALE: One more objection.

13 THE COURT: All right.

14 MR. HALE: We object to references to other  
15 employees' bonuses. We're trying the case here on whether  
16 Jeff Carpenter had an agreement and he received an annual  
17 bonus. This would encourage the jury to decide the case on  
18 evidence that's not before them and facts that aren't  
19 relevant. It violates the motion in limine and the Court's  
20 ruling that there would be no references to other employees'  
21 bonuses. So we believe that it -- well, it does require or  
22 encourages the jury to decide the case on an improper basis  
23 and assume that because other employees may have gotten  
24 bonuses that Jeff Carpenter would have been promised a bonus  
25 as well. It's also a violation of the motion in limine.

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COURT' S RULING

THE COURT: All right. It's overruled.

MR. HALE: All right. Thank you,  
Your Honor.

(The jury entered the courtroom.)

THE COURT: Welcome back and good morning  
still, ladies and gentlemen.

We'll continue with the closing statements  
[sic]. We have concluded the first portion of plaintiff's  
closing statement -- closing argument. So we'll hear now  
from Mr. Friedman for up to 45 minutes. And then after that  
we'll hear for -- from Ms. Gibson for her rebuttal argument,  
which will be about -- it's between 20 and 21 minutes that  
she has left. Then we'll go over those last two pages in  
the charge. Then we'll ask that you deliberate.

But the next thing we'll do is the closing  
argument for defendants presented by Mr. Friedman.

And, Mr. Friedman, whenever you're ready.

**DEFENDANTS' CLOSING ARGUMENT**

MR. L. FRIEDMAN: All right.

I'm back.

May it please the Court.

THE COURT: Counsel.

MR. L. FRIEDMAN: Counsel.

Ladies and gentlemen of the jury, once

1 again, I'm very proud to represent my friends, my long-term  
2 friends, Cheryl and Brian Potashnik, and the Southwest  
3 Management, Affordable Housing Construction, and Southwest  
4 Development. Cheryl Potashnik is no longer in the case.

5 This is an important case, as I said at the  
6 beginning, and you've heard a lot of evidence. A lot of  
7 things have passed by you from the witness stand in the last  
8 couple of days. And I want to thank you for your service, I  
9 want to thank you for your attention, and I want to thank  
10 you for your effort; because there have been a lot of  
11 boards, there have been 30, 40 pieces of evidence, and  
12 it hasn't all been easy to take in. But I've watched you  
13 and I know that you've paid attention.

14 What I want to remind you is that the  
15 plaintiffs have the burden of proof. The plaintiffs have to  
16 prove each and every element of their case by credible  
17 evidence; not just by a board, not just by a PowerPoint, and  
18 not just by Mr. Carpenter's self-serving Emails to himself.

19 You know, I listened carefully to the  
20 testimony of Mr. Carpenter and I watched the evidence that  
21 was presented by Mr. Carpenter, and most of it -- or let me  
22 take it back -- all of it came from Mr. Carpenter. It was  
23 Mr. Carpenter's Emails to himself, it was documents that  
24 Mr. Carpenter generated, it was documents that Mr. Carpenter  
25 sent to the Potashniks. It was comments that Mr. Carpenter

1 made to Mr. Sulakhe, comments that Mr. Carpenter made to  
2 Keith Jones, comments that Mr. Carpenter made to Mark Jones.  
3 But there's no evidence that Brian Potashnik or  
4 Cheryl Potashnik ever agreed to any agreement with regarding  
5 [sic] bonus, compensation, severance, beyond what was in the  
6 employment contract with Mr. Carpenter.

7 This is not about safety rules. You didn't  
8 hear any evidence about safety rules. This is not about a  
9 gut feeling. This is about evidence that you heard from the  
10 stand.

11 Ms. Gibson would like you to follow your  
12 feelings. That's not what the judge instructed you to do.  
13 This -- your decision will be based on credible evidence.  
14 And I'm going to summarize this for you and show you that  
15 what Mr. Carpenter said was not credible evidence starting  
16 from the beginning when he filed this lawsuit and starting  
17 from the way he conducted himself in this courtroom from the  
18 beginning of the case.

19 Number one, he wasn't the lead witness.  
20 Plaintiffs usually get up and tell their story. They want  
21 their story to be told. They lead chin first. That's not  
22 what he did. He wanted to hear what Brian Potashnik would  
23 say; then he wanted to hear what Cheryl Potashnik would say  
24 so that he could cover up whatever they had to say. He  
25 wanted to hear what Keith Jones had to say so that he, if

1 necessary, could contradict those people.

2 It's important to note that none of the  
3 witnesses Mr. Carpenter called supported his case. None of  
4 the witnesses that we called supported Mr. Carpenter's case.

5 If you look at Deepak Sulakhe, who was here  
6 the other day, he said Mr. Carpenter thought very highly of  
7 himself.

8 Mr. Carpenter asked him for advice about  
9 what kind of compensation or what kind of severance he  
10 should ask the Potashniks for. Should I ask for one  
11 percent? Should I ask for three percent? Do you think five  
12 percent is too much? That's not the communications of  
13 someone who had an oral agreement back in March of 2006.  
14 Those aren't the questions that somebody who already had an  
15 agreement would be asking someone in Mr. Sulakhe's position.

16 Aaron Goldstein, someone that Mr. Carpenter  
17 said he bragged to about being a millionaire, Mr. Goldstein  
18 said, I don't remember anything, I don't remember that  
19 conversation, I don't remember Mr. Carpenter bragging to me.  
20 Paul Cohen said the same thing.

21 Mr. Carpenter said he was on the plane to  
22 Vegas. Mr. Carpenter bragged to him that he was going to be  
23 a millionaire. Probably something somebody would remember.  
24 Common people becoming a millionaire, it's a big event. In  
25 fact, it's a big event for Mr. Carpenter.

1                   If I was going to become a millionaire, I'd  
2 remember it. It's like being in your house during an  
3 earthquake. You remember that day. You remember where you  
4 were, you remember what you were wearing, you remember where  
5 your slippers were, and you remember how you escaped from  
6 your house. Not Mr. Carpenter.

7                   He gave 10 different versions of what the  
8 oral agreement was. He added to it, he subtracted to  
9 it, and he gave you different dates.

10                  In fact, he changed the theory of the case  
11 from the beginning when he started a couple days ago. When  
12 he came here this was a contract case. He wanted to  
13 persuade you that there was an oral modification of his  
14 contract, of his employment agreement. Then as the case  
15 went on and he heard the testimony, as of yesterday he said  
16 from the witness stand, "I have no contract claim. I have  
17 no contract claim." I wrote it down. He said, "I have no  
18 contract claim. I'm not asking for relief under the  
19 employment agreement."

20                  What he said was I have two oral agreements  
21 that I'm trying to enforce, and let me tell you about my  
22 second oral agreement. I don't know if you saw me. I was  
23 quite surprised because, notwithstanding other people in  
24 this courtroom, I've now known Mr. Carpenter for over 10  
25 years and I never heard anything about a second oral

1 agreement until yesterday.

2 Because two things that Mr. Carpenter and I  
3 agreed on, one is that the only contract he ever had with  
4 Southwest Management was the employment agreement signed by  
5 both parties, Southwest Management and Mr. Carpenter; and,  
6 two, he can't recover a dime under that contract. He and I  
7 agree to both of those things.

8 Now, at the beginning, I'm going to  
9 summarize the case and show you the pleadings. He was  
10 telling you that he was due a bonus for the 2004/2005  
11 period, his first year. And it wasn't until I  
12 cross-examined him that he admitted, oh, yeah, I got that  
13 bonus, I got that \$50,000.

14 And I said, Mr. Carpenter, not only did you  
15 get that \$50,000, but the Potashniks were generous enough to  
16 give you another 25,000 to pay the taxes on that 50,000;  
17 isn't that true? He said, Oh, yeah, that's right. So  
18 you're not asking for the \$50,000 bonus for the first year?  
19 He said, No, I'm not. So now we're only asking for bonuses  
20 for years two and years three and maybe eight months at the  
21 end? He said, That's right, two years and eight months at  
22 the end.

23 When you get your jury charge you'll see  
24 that he's not even asking for the eight months at the end.  
25 He's now asking for 2005 to 2006 and 2006 to 2007. And for



1 that he's asking you to award him about 600,000, which he  
2 was asking for; about 200,000, which he was asking for; but  
3 400,000, which is his new number, because Mr. Carpenter  
4 admitted he renegotiates because he wanted more. That's  
5 what this is about.

6 This whole case is about Mr. Carpenter. He  
7 wanted more. He wanted more when he sued his first employer  
8 or the previous employer, Brisbane. After he separated from  
9 his previous employer, he sued them because he wanted more.  
10 And after he left Southwest Housing Management, sued his  
11 next employer because he wanted more.

12 Now, I don't know what Mr. Carpenter's  
13 personal problems are. He put in his personal notes that he  
14 had a tax lien and litigation expenses. He had personal  
15 financial problems, problems with his wife and family.  
16 That's really not our business but, obviously, there was  
17 something going on that forced him to try to get more money  
18 from Southwest Housing and the Potashniks.

19 But one thing I do know is he didn't have  
20 the first oral agreement and didn't have the second oral  
21 agreement. Because every time he proposed to get his  
22 so-called oral agreement in writing, gave his proposed  
23 amendment to employment contract to the Potashniks, they  
24 refused to sign it. Gave his draft severance agreement to  
25 the Potashniks, they refused to sign it. Every time he made

1 an effort to get something signed by the Potashniks they  
2 just said no. And the reason they said no was they didn't  
3 agree to it.

4 There was never an oral agreement. There  
5 was never any agreement. And no witness, no witness, no  
6 third-party witness, substantiated any agreement other than  
7 the employment agreement with Mr. Carpenter.

8 And I submit to you, based on  
9 Mr. Carpenter's credibility and the circumstantial evidence  
10 surrounding his credibility, not even Mr. Carpenter believed  
11 he had an agreement, because he flip-flopped back and forth.  
12 I made that agreement on March 6th, he said. No, no, I made  
13 it on October 13th. No, no, I asked for 400,000. No, no, I  
14 asked for 600,000.

15 But I did and I didn't. I wasn't sure and  
16 I didn't know. If he had made that agreement, he would  
17 know.

18 You know, Mark Twain said if you tell the  
19 truth you don't have to remember anything, because if you  
20 tell the truth you know it. You were there, you saw it, you  
21 heard it, you smelled it, and you just repeat the truth over  
22 and over again. You tell the same story over and over and  
23 over again. But if you lie, you don't remember what you  
24 said. You don't remember what you said last time, you don't  
25 remember what you said the time before, and you don't

1 remember what you said the time before that. And that's how  
2 you get caught and that's how you get tripped up, and that's  
3 how Mr. Carpenter wound up here with at least 10 different  
4 versions of what he calls a definitive agreement.

5 You know, oral contracts are legal in the  
6 state of Texas if people agree, if there's a meeting of the  
7 minds; if two people agree on the same material terms, they  
8 know what the agreement is, they know how much the agreement  
9 is, they know when it's going to be paid, they know what the  
10 terms are, and they agreed to it. It just never happened.

11 He never had a meeting of the minds with  
12 Brian Potashnik for a lot of reasons. Brian Potashnik was  
13 busy. Brian Potashnik was preoccupied.

14 And Brian Potashnik didn't believe that an  
15 employee that worked for his company -- and he did his job.  
16 Nobody's saying he didn't do his job. But an executive  
17 employee that was generously paid \$200,000 plus a car  
18 allowance, plus health insurance, plus paid time off, plus,  
19 plus, plus, would get a million-dollar bonus after working  
20 three-and-a-half years. There were employees -- there were  
21 other employees that were worthy in that company.

22 And you heard from Mr. Sulakhe, when he  
23 read Mr. Carpenter's deposition and found -- and heard what  
24 Mr. Carpenter claimed the deal was. He was surprised. He  
25 was shocked. Because he said that an employee in that

1 position, executive vice president of the company, didn't  
2 merit that kind of bonus.

3 Now, look, this isn't General Motors. This  
4 is not Exxon Mobil. This is an affordable housing company.  
5 This is an affordable housing company who uses their money to  
6 build affordable housing projects for low-income families.  
7 That million dollars could have been put to better use than  
8 giving it away to an executive vice president.

9 Mr. Carpenter was offered a  
10 hundred-fifty-thousand-dollar severance when he left, but he  
11 turned it down. Not because he didn't think it was a good  
12 bonus; because he needed more. He needed more. He turned  
13 down the hundred and fifty-thousand dollars. It's not  
14 credible.

15 So, I'm going to briefly go through the  
16 case. I know you've heard the evidence more than once --  
17 probably sick of it by now -- so maybe I only have to hear  
18 it one more time.

19 I've prepared a timeline. I'm going to  
20 give it to you just for illustrative purposes. We're going  
21 to collect it before you go and deliberate.

22 In fact, would you just pass it?

23 I've prepared a timeline. I've made the  
24 boxes on the timeline -- the dates and boxes -- different  
25 colors to indicate every time Mr. Carpenter changed his

1 story. So, quickly, he had an employment agreement on  
2 February 13th, 2004.

3 Steve, I don't think we need to go through  
4 it.

5 You remember the employment agreement.  
6 It said what Mr. Carpenter's duties were. It said that no  
7 amendment can be had unless it's in writing and signed by  
8 both parties. It encompassed the subject matter of his  
9 employment. It encompassed the bonuses in Paragraph 4B.

10 And if you remember at the beginning of the  
11 case, Ms. Gibson and Mr. Carpenter were arguing that the  
12 bonuses were not discretionary; that 4B entitled  
13 Mr. Carpenter to bonuses for all three-and-a-half years.  
14 But now at the end of the case, with the testimony and  
15 evidence in, they've now acknowledged that the only bonus  
16 he's entitled to under the contract was year one and that  
17 the rest of the years were discretionary by the employer and  
18 they're not asking for a bonus under the contract. They're  
19 only asking for a bonus now pursuant to a second oral  
20 agreement, which we've heard about for the first time  
21 yesterday. And let me put that to bed.

22 "What are the details?" I asked him. He  
23 said, "Well, I don't know the date. It happened somewhere  
24 before March 14, 2007."

25 "Where were you?" "We were driving

1 somewhere. Maybe the Ash Creek Apartments and maybe the  
2 Scyene Apartments and maybe one more. I don't remember."

3 What were the details? You know, we had an  
4 oral agreement for \$400,000. Was it written? No. Was  
5 it signed? No.

6 Were you renegotiating? Yeah, I was  
7 renegotiating, just like I was renegotiating when I asked  
8 for different amounts less than 400,000.

9 Mr. Carpenter was always a moving target  
10 because he just wanted more.

11 The second time, on May 6, 2006, Carpenter  
12 alleges that an oral agreement was made at Cafe de Brazil,  
13 and I didn't learn about that till I took Mr. Carpenter's  
14 deposition later on.

15 What was that deposition again?

16 MR. DONOHUE: May 15th of 2010.

17 MR. L. FRIEDMAN: May 15, 2010.

18 So, in 2010 -- play that clip we played  
19 during trial -- 2010, when I took his deposition and asked  
20 him when he made his oral agreement --

21 (Audio clip playing)

22 "Q. Mr. Potashnik, concerning the three-percent  
23 compensation on the so-called sale of the --"

24 MR. L. FRIEDMAN: I'm sorry. This was his  
25 lawyer examining him.

1 (Audio clip resumed)

2 "Q. -- during the time frame of May -- I believe May  
3 of '06 at lunch at --"

4 "A. Cafe de Brazil, I believe."

5 "Q. And can you describe what was said?"

6 "A. Well, he was following up with, you know, here,  
7 we have several different offers. We discussed what we want  
8 to do. You're the key ingredient in doing -- in promoting  
9 this."

10 "You know, development and construction,  
11 you know, they're pretty much done. You're going to be the  
12 face of the company. You'll be meeting with -- doing the  
13 property tours. You'll be doing, you know, actually, the  
14 due diligence, the selling of the -- of the company and so  
15 forth."

16 "And you're -- you're a key proponent of  
17 why we're in the position to sell the company. And with  
18 that we would like to compensate you three percent of the  
19 sales price. And there was a stipulation with that, and  
20 that was less normal closing costs, which I estimated was  
21 close to a mill -- basically, a million dollars. 'Cause I  
22 think at the time he said the offer was 37 million."

23 "Q. What was your response?"

24 "A. I was -- I was pleased with that, knowing that we  
25 still had unresolved issues with, you know, 4B of my

1 agreement. But I would like to have more. I know I  
2 contributed a great deal, but I was -- I was comfortable  
3 with it."

4 "Q. Did you accept his offer?"

5 "A. Yes, I did."

6 (Audio clip stopped)

7 MR. L. FRIEDMAN: So, in May of 2010, which  
8 was eight years ago, he said his oral agreement happened in  
9 March 14th -- I'm sorry -- May of 2006 and it happened at  
10 Cafe de Brazil. And the bonuses he was looking for was  
11 pursuant to Paragraph 4B of his employment contract.

12 So, last week when I had my first  
13 opportunity to cross-examine Mr. Carpenter and ask him about  
14 the same deal, I said, "When did you make your oral  
15 agreement?" He said, "That oral agreement was October 13th,  
16 2006." I said, "Are you sure?"

17 No, first he said May 14th, 2006. And I  
18 said, "Are you sure?" He said, "No, no, no. That oral  
19 agreement was October 13th, 2006." And I said, "Are you  
20 sure?" And he said, "Yeah. Absolutely."

21 And I said, "Where did that happen?" He  
22 said, "Cafe Express. And I remembered that deposition." I  
23 said, "Are you sure about that?" He said, "Oh, yeah, I  
24 remember that." And I said, "Well, what was that deal?"  
25 And he said, "Three percent of the sales proceeds minus



1 normal closing costs." And then he added, "Severance  
2 bonuses -- minus severance bonuses paid to corporate  
3 employees."

4 No corporate employees because that's not  
5 what it says on the jury charge and that's not what  
6 Mr. Carpenter testified to several times later. He  
7 testified to all employees, he testified to any employees,  
8 he testified to select employees. And that's what happens  
9 when you don't tell the truth. You don't remember the story  
10 you told before.

11 So then we move on. October 13th, when  
12 Mr. Carpenter alleges his oral agreement, you recall the  
13 next significant date. I'm moving more quickly now. On  
14 March 14, 2007, Mr. Carpenter sends his amended employment  
15 agreement to Mr. and Mrs. Potashnik. And that's the first  
16 time he said -- testified -- that he ever puts this oral  
17 agreement in writing.

18 Let's do this quickly. Let's see it, the  
19 amended employment agreement.

20 So the significance here is that he says  
21 they desire for employee to remain employed by employer  
22 until the employer entities sell the sale to Cascade. So,  
23 in other words, when he first put it in writing he says,  
24 "I'm going to stay till the end. I'm going to stay till the  
25 closing."

1 In the closest time to this alleged oral  
2 agreement Mr. Carpenter says my deal was to stay till the  
3 closing. Now, you know that that's changed. And now the  
4 current story is, well, I only had to stay till I was  
5 needed, and I decide when I was needed.

6 Let's -- let's move on.

7 Is there a "three percent" definition here?  
8 I know there is. Go to that in the amended agreement.

9 On top, he talks about three percent of his  
10 gross compensation, including any fees or loans paid to  
11 employer -- which is new -- less closing costs of brokerage  
12 fees, attorney's fees, title fees, and all the normal  
13 closing costs with all related closing costs -- new term --  
14 capped at a maximum of three percent of the compensation  
15 paid to employer, but without deduction, without deducting  
16 any compensation paid to any other employees of any employer  
17 entities. The reason that's important is he changes the  
18 "without deducting" to "with deducting" on all subsequent  
19 iterations of his alleged oral employment agreement. That  
20 changes over and over again.

21 And, again, the description of who -- who  
22 is involved, here it says any other employees. Over there  
23 he said corporate employees. And you'll see over -- over  
24 other times he said selected employees. And if it's  
25 selected employees then you know it could never agree to the

1 term because there's no evidence that anybody selected any  
2 employees.

3 So we move on. Focusing on the evidence,  
4 Mr. Carpenter's terminated October 31st. He secretly  
5 records two conversations with Mr. and Mrs. Potashnik  
6 because he's instructed by his wife to do so. She wants him  
7 to get the deal on tape.

8 And we've been over these recorded  
9 conversations. He has over 80 opportunities to speak. And  
10 the one thing he doesn't do in these recorded conversations  
11 is confront the Potashniks and say, you know, Brian, we made  
12 that oral agreement on either May 6, 2006, or he could say  
13 October 13, 2006, Cafe de Brazil, Cafe Express, or he could  
14 pick another restaurant, and here's what the terms are. He  
15 never says it because he knows if he says it Brian or Cheryl  
16 is going to say, "What are you talking about? We don't have  
17 a deal." So he skirts around and he goes around and around  
18 and around.

19 And the two things you get out of those  
20 conversations is both Brian and Cheryl say, "Look, man, we  
21 can't make any commitments right now. Everything's influx.  
22 We don't know how it's going to shake out, but give us some  
23 room and, you know, maybe at the end we'll pay you some  
24 money." Both Brian, both -- and Cheryl -- separate  
25 conversations, tell him the same thing, but he doesn't give

1 up because he needs more.

2 This November 15th Email is the smoking  
3 gun, so let's pull it up. It's Jeff Carpenter's Email to  
4 Cheryl. And what does he say? He says, "Last year, after  
5 the Cascade transaction was announced and it became  
6 reasonably clear that I would not be retained after closing  
7 of that transaction, you implored me to stay with the  
8 company through that time."

9 I asked him, "What does that time mean,  
10 stay till the closing?" He said, "Yes, that's what  
11 it means. And that continuity, my continued services, were  
12 essential to the success of the transaction."

13 In exchange -- I ask him, "In exchange for  
14 staying till the closing?" He said, "Yeah."

15 You informed me that I would be entitled to  
16 receive at three percent of the proceeds of that transaction  
17 net of certain costs which, based on the structure at that  
18 time, would represent an amount equal to \$1 million. This  
19 in addition to the unpaid taxes, unpaid annual bonuses.  
20 Asked him if that was accurate. He said yes.

21 Of course, because he didn't tell the  
22 truth, he left out any reference to paid bonuses or  
23 compensation or any payments to employees, no matter how he  
24 described it. But the important thing here is in his own  
25 words in his self-serving Email with the Potashniks on

1 November 15th, 2007, eight months, October -- oh, I'm sorry.  
2 Five weeks after he was terminated he expresses that his  
3 deal was to stay till closing. Now that's changed over the  
4 course of this trial. Now he says all I had to do was stay  
5 until I was needed. That was the oral agreement. But he  
6 didn't think that was the oral agreement a couple weeks  
7 after he supposedly made that oral agreement.

8 THE COURT: You've gone 25 minutes.

9 MR. L. FRIEDMAN: Thank you.

10 Go ahead. Next.

11 Separation agreement, the same thing. He  
12 sends it over there the same day.

13 We're going to do this quickly. Let's go  
14 to the green part.

15 It's Mr. Carpenter saying that he's -- he  
16 has earned \$600,000, but he needs it immediately. He needs  
17 the money immediately. Pay me now, pay the rest a couple of  
18 days, 90 days. I need it now. And then I'll be paid the  
19 rest --

20 Let's go to three-percent combination.

21 He also adds the term he wants the  
22 Potashniks to unconditionally guarantee this personally.  
23 That was never -- that was never part of the oral -- of any  
24 oral agreement, no meetings of the minds. They never had a  
25 meetings of the minds and now Mr. Carpenter is adding on.

1 This is what he'd like to have. It's not what they agreed  
2 to.

3 No one ever talked about personal  
4 guarantees. And now he says the formula is the gross  
5 compensation shall not include and shall specifically  
6 include any amounts for the benefit of the Potashniks, the  
7 company, its stockholders, in the form of fees, bonuses,  
8 severance, payments, loans or otherwise. Where'd that come  
9 from? It certainly wasn't in the oral agreement.

10 No credibility. If you don't tell the  
11 truth, you can't remember what you said before. And this  
12 story changes over and over again.

13 Mr. Page, his sworn petition, I think this  
14 is the last one we're going to show and then we'll just talk  
15 about it.

16 His sworn petition, if you remember how we  
17 got here, he filed this lawsuit on March 8th, 2008.

18 Can we pull it up?

19 Mr. Carpenter swore at the time he filed  
20 this lawsuit this was true and correct. Remember the  
21 declaration at the end, last page under penalty of perjury?

22 We'll come back to 26. Let's go to the --  
23 Mr. Carpenter signed and had notarized all factual averments  
24 of statements contained in these paragraphs: 20; 21; 22; 25;  
25 and 26. We're going to come back to 26.

1                   Plaintiff's original petition are within my  
2                   personal knowledge and true and correct. That's how he  
3                   opened the door to this lawsuit. So let's go to Paragraph  
4                   26. Let's see what was true and correct at the time he  
5                   filed this lawsuit. He says, When the sales process began,  
6                   one or more of the defendants agreed to pay me three percent  
7                   of the gross sale, less normal closing costs, brokerage  
8                   fees, attorney's fees related to the sale -- new term, not  
9                   criminal case -- title fees and normal closing costs. This  
10                  agreement was -- or agreement was made in consideration for,  
11                  in part, plaintiff's remaining an employee of one or more of  
12                  the defendants to assist in effectuating the sale.

13                  I asked him when he was on the stand, "Does  
14                  that mean stay till closing?" He said, "Yeah."

15                  He swore that this was true. And by the  
16                  way, never mentioned anything about paying employees. This  
17                  was in 2008 when he had a better -- better memory of that  
18                  so-called oral deal than he had last week, 10 years later.  
19                  But I guess that was true then. This, maybe, is true now  
20                  about the criminal case, closing costs. Mr. Carpenter will  
21                  say whatever he has to say to get more because that's all  
22                  this is about, getting Mr. Carpenter more.

23                  But let's -- let's move forward.

24                  So then he talks about the minimum of  
25                  150,000 in owed bonuses he wants placed in the registry of

1 the court. So, in March of 2008, he was seeking \$150,000 in  
2 bonuses. But because he wanted more, that figure has --  
3 grew to 600,000. Except now he can't justify it, so he's  
4 asking for 400,000.

5 Let's move on to the next, next item on  
6 your timeline.

7 Mr. Carpenter's deposition, if you  
8 recall -- I'm not going to play it, Steve -- you remember I  
9 asked him how much his claim was for on those bonuses. I  
10 said, "Can you give me an amount?" He said, "No, I can't.  
11 I can't identify an amount what those bonuses were for."

12 His first amended petition he had a new  
13 definition for his three percent, his claim for a  
14 three-percent fee. At that time he said minus compensation  
15 to any employee.

16 The declaration is interesting, which I  
17 showed you, because that was the first time we learn in 2013  
18 that he was claiming he made this oral agreement with  
19 Mr. Potashnik on October 13th, 2006.

20 THE COURT: You have 15 minutes left.

21 MR. L. FRIEDMAN: Okay.

22 Carpenter's interrogatory responses, he now  
23 has operational unit assets to the gross sales price.  
24 Second amended petition, he gets rid of the formula  
25 al together. Third amended petition, no formula, but he now



1 admits that the bonuses are at the sole discretion of the  
2 employer. And then when I took his deposition two weeks ago  
3 he said, man, I added new terms, I made mistakes, I was  
4 still negotiating, and basically admitted he had no deal.

5 I pinned him down. I said, "All of these  
6 things are not consistent." Yeah. I said, "You made  
7 errors." Yeah. I said, "You made counter offers." He  
8 said, "No, no, no, I didn't make any counter offers." But  
9 he did.

10 I said, "You made proposals." He said,  
11 "Yeah." I said, "You included additional and different  
12 terms." He said, "Yeah." And I -- and then he said  
13 Brian Potashnik was supposed to put it in writing.

14 And then last but not least, Carpenter's  
15 testimony yesterday was shocking.

16 Pull up that board.

17 It's the same board from over there.

18 Mr. Page put it up here.

19 For the first time we learn a second oral  
20 agreement when he realized he couldn't recover under the  
21 contract. He had a second oral agreement in the car ride,  
22 and that was not for the 2004/2005 bonus because he already  
23 admitted that he had been paid for that. But it was now for  
24 the 2005/2006, 2006/2007 and eight months for 2007.  
25 Yesterday, he was claiming for two years and eight months.

1 He's not claiming that today when you look at your jury  
2 charge.

3 He acknowledged he had absolutely no  
4 contract claim. So when Ms. Gibson said you can decide if  
5 it's a modification to the contract or you can decide if it  
6 was an oral agreement, that's not what Mr. Carpenter said.  
7 He said, "I have no contract claim." I was clear about it.  
8 I wanted to know before we got here, contract claim, oral  
9 agreement, 'cause I knew there was no oral agreements.

10 Said to him, "You renegotiated?" And he  
11 did. And I said, "What was the purpose here?" He said,  
12 "Well, I just wanted more."

13 Let me go to the jury charge 'cause I think  
14 that's important, and use my remaining time on the jury  
15 charge.

16 Go to Question Number 1. So, Question  
17 Number 1, I wouldn't mind going to the beginning of the  
18 question. Page back.

19 The question is: Did Jeff Carpenter and  
20 Southwest Housing agree -- and every time you see agree,  
21 according to Mr. Carpenter, he is talking about an oral  
22 agreement. He has eliminated his contract claim. So every  
23 time you see agree, he is only talking about the two oral  
24 agreements he is seeking to enforce.

25 Did Mr. Carpenter and Southwest Housing

1 Management -- not Brian Potashnik, not Development, not  
2 Affordable Care, not a mother in Florida, only Southwest  
3 Housing Management -- did Jeff Carpenter and Southwest  
4 Housing Management agree that Southwest Housing Management  
5 would pay one or more annual bonuses to Jeff Carpenter  
6 covering the period from March 15th, 2009, to March 15,  
7 2007? And the answer's no. The answer is no because none  
8 of the witnesses, no third-party witness, not Keith Jones,  
9 not Mark Jones, not Deepak Sulakhe, not any of the  
10 third-party witnesses tendered any evidence that there was  
11 an agreement. Mr. Potashnik denied it, Cheryl Potashnik  
12 denied it, and the only person that said there was a promise  
13 was Mr. Carpenter. And I'm arguing that Mr. Carpenter  
14 doesn't have a little credibility. He has no credibility.

15 He has changed his story so many times.  
16 He's beyond mistakes. He's beyond errors. He has earned  
17 the category of liar.

18 The answer to Number 1 is no.

19 Number 2, if you answered answered yes to  
20 Number 1, then you would answer Number 2. But for Number 2  
21 it's -- the answer would be no answer, NA, no answer.

22 And if you follow me, I'll get you home by  
23 3:00 o'clock today.

24 So the answer to two is no answer, NA.

25 Three, again, if you answered yes to Question Number 2, then

1 you have to answer this. But the answer here, again, is NA,  
2 no answer, or no or no answer.

3 Question Number 4 -- one and four are the  
4 key questions here -- did any of the defendants named below  
5 and Jeff Carpenter agree on October 13th, 2006, to pay  
6 Jeff Carpenter three percent of the total of gross  
7 asset-sale revenue to sellers, less normal closing costs,  
8 less sale-proceeds bonuses made to employees if  
9 Jeff Carpenter would stay as long as needed to help make the  
10 asset sale happen? The answer's no.

11 The answer's no for a couple of reasons.  
12 Number one, Jeff Carpenter didn't know when he made this  
13 agreement. He testified in his deposition -- and which was  
14 incorporated into evidence that you saw -- that it happened  
15 in May of 2006. Then he testified here that it happened on  
16 October 13th, 2007. That's not credible. And there could  
17 be no meeting of the minds if he had this agreement occur in  
18 two different places, so it's impossible to have an  
19 agreement.

20 In addition -- did I lose the question?  
21 Can you go back?

22 In addition, if you look at the number one  
23 where it says three percent of the gross asset-sale revenue  
24 to sellers, Mr. Carpenter has changed that definition no  
25 less than 10 different times. And if he didn't know what

1 the agreement was there is no way that Southwest Management  
2 could ever agree with him or anybody could ever agree with  
3 him on what an oral agreement was. There's no way.

4 He said three percent of the assets. He  
5 says three percent of the operational units. He included  
6 the general -partnership interests. He said selected  
7 employees, he said corporate employees, and at one point he  
8 said without employees. So, if he himself didn't know what  
9 that agreement was, there could be no agreement in addition.

10 The only testimony you got from Brian and  
11 Cheryl Potashnik from that witness stand was they didn't say  
12 yes. They never consented. And I think that's credible  
13 testimony consistent with what you heard.

14 And number two, again, if Jeff Carpenter  
15 would stay as long as needed. And you saw in Jeff  
16 Carpenter's own words, his own Emails, back when he didn't  
17 know he'd be scrutinized, that his deal was to stay till  
18 closing, not as long as needed. As long as needed was  
19 something he changed during this trial so that he could get  
20 more.

21 Let's go to the next one.

22 So the answer to 4 is no, no, no, and no.

23 Go back.

24 Because none -- none of these people or  
25 entities could have entered into an oral agreement with

1 Mr. Carpenter. And every time you see agreement, remember,  
2 according to Mr. Carpenter, he's only here to enforce two  
3 oral agreements; one on the so-called bonuses and the other  
4 one on the three percent from the proceeds.

5 And I will remind you Keith Jones, the CFO  
6 and a CPA, never heard the term "pay to stay", never heard  
7 the term "stay bonus". Mark Jones, the community  
8 development person, never heard the term "stay bonus", never  
9 heard the term "pay to stay".

10 After they testified, you'll recall  
11 Mr. Carpenter started to say, well, they're interchangeable;  
12 stay bonus, severance, pay to stay, severance, it's the  
13 same. That's what I meant. And by yesterday he was calling  
14 it severance too. He was very flexible.

15 THE COURT: You have five minutes.

16 MR. L. FRIEDMAN: Thank you very much.

17 So, on 5 -- 5, okay -- for each defendant  
18 for whom you answered yes in Question 4, did that defendant  
19 also fail to comply with such agreement, there wasn't any  
20 agreement. You have to answer no, no, no, no. Please no,  
21 no, no, no.

22 Number 6, as of October 13th, 2006, was the  
23 agreement found in question possibly performable in less  
24 than one year? I think it was. I don't think it was  
25 performable in less than one year. I think it was possibly

1 performable in less than one year. So you decide on that  
2 and you make your own decision.

3 Next question, 7, what sum of money, if  
4 any, if paid now in cash, would fairly and reasonably  
5 compensate Jeff Carpenter for his damages, if any, that  
6 resulted from such failure to comply with such oral  
7 agreement? The answer has to be zero because there was  
8 never an oral agreement. There wasn't an oral agreement  
9 number one; there wasn't an oral agreement number two.

10 And remember, when I say oral agreement,  
11 both parties had to agree on all the terms of an oral  
12 agreement. Both parties had to have a meeting of the minds  
13 on all the material terms. That means time, price, payment,  
14 all of it. And the evidence doesn't support a meeting of  
15 the minds.

16 Number 8, did Jeff Carpenter perform  
17 compensable work to stay on as long as he needed to help  
18 make the asset sale happen for any of the below-named  
19 defendants? The answer's no. Jeff Carpenter was paid well,  
20 he worked well, and he didn't do anything outside his work  
21 assignments. You heard from Deepak Sulakhe and you heard  
22 from Mark Jones he did what he was paid to do.

23 Did he answer subpoenas? Yes.

24 Brian Potashnik asked him to answer subpoenas.

25 Did he go to Houston? Yes, he did. He did

1 some good work in Houston. But he didn't do anything  
2 outside the scope of his employment, and for that work he  
3 doesn't get a bonus. So the answer to that is no.

4 Question 11 -- I'm sorry -- Question 9,  
5 what is the reasonable value of such compensable work at the  
6 time and place it was performed? The answer is zero or no  
7 answer.

8 Number 12 -- I didn't know what this was  
9 about -- if any of the defendants were engaged in a joint  
10 enterprise in connection with the asset sale. You heard no  
11 evidence of anything about a joint enterprise connection  
12 with the asset sale, nothing, zero. So you have to answer  
13 this question with no, no, no, and no. No evidence about an  
14 enterprise or endeavor, no enterprise about a common  
15 purpose, no enterprise about community or pecuniary  
16 interest, no enterprise about equal rights or the voice of  
17 an enterprise, nothing. You have to answer that no.

18 Same thing goes with Question Number 13.  
19 It's virtually the same question. There was no evidence in  
20 this trial that addresses Question Number 13.

21 And the same thing with 14. Is  
22 Brian Potashnik responsible for the conduct of the entities  
23 named below? The answer is no. Those entities are  
24 separate, independent. The entities act on their own.  
25 Brian Potashnik is responsible for his conduct; these



1 entities are responsible for their own conduct.

2 I'm going to give you back a little time.

3 And, ladies and gentlemen, truly, on behalf of the  
4 Potashniks, Mike Donohue, Jason Friedman, Steve Page, our  
5 paralegal Sarah Balog, Carla Williamson, appreciate your  
6 time and effort. You've been -- you've been great. Thank  
7 you very much.

8 THE COURT: Thank you, Mr. Friedman.

9 Ms. Gibson, you get the last word as  
10 between the attorneys.

11 MR. L. FRIEDMAN: I forgot to mention the  
12 script, but y'all remember that.

13 THE COURT: You still have about 21  
14 minutes.

15 MS. GIBSON: Thank you.

16 I'm just going to get this back up.

17 **REBUTTAL ARGUMENT**

18 MS. GIBSON: What defendants are saying in  
19 this case is why this case has consequences. For example,  
20 one, the argument is because Jeff Carpenter has salary, even  
21 though he stayed on as long as the Potashniks asked him to  
22 and did everything requested of him, it is undisputed that  
23 he worked hard; that the Potashniks continually said when  
24 they discussed the bonuses, "I would never screw you." And  
25 now at the end of the day they say his salary covered

1 everything.

2 What Jeff Carpenter gave, when you look at  
3 Question 8, the valuable service he gave was he stayed. He  
4 stayed. He turned down a more lucrative job offer. And  
5 what defendants' argument means is that for everybody, for  
6 everyone, including those Mark Jones talked about -- the  
7 teachers, the nurses, the firefighters, whoever it is --  
8 that argument means no one would ever be able to be entitled  
9 to a raise, to a promised bonus, or to anything additional  
10 compensation because the argument is your salary covers  
11 everything. And at the end of the day the employer can deny  
12 what it promised someone and that person did all of the  
13 work.

14 Now, I'm not going to have enough time to  
15 address everything I disagree with with Mr. Friedman. But  
16 Mr. Friedman said to look at self-serving, who's  
17 self-serving and what's credible evidence.

18 Deepak Sulakhe said around the time that  
19 they decided to sell the company -- this is in May of  
20 2006 -- it was Brian that -- he repeated something Jeff said  
21 to him. Deepak said Brian Potashnik told him at this  
22 time -- this is before they had the seller, before they had  
23 a price -- Brian told Deepak that Jeff may not need to work  
24 again if this transaction goes through. Brian was obviously  
25 promising something.

1                   Jeff Richards testified that even though  
2                   they immediately wanted to hire Jeff Carpenter for more  
3                   money, more base salary, and more bonuses, Jeff Carpenter  
4                   turned it down because he needed to stay in order to get a  
5                   large compensation package.

6                   And you've heard from Cheryl Potashnik.  
7                   Cheryl Potashnik said that they intended to pay Jeff  
8                   Carpenter a bonus out of the asset-sale proceeds; that they  
9                   did have a stay program because continuity was important.  
10                  And the intent of offering those stay bonuses was to get  
11                  people to stay on, despite the asset sale. And, in  
12                  addition, there were criminal proceedings going on.

13                  Keith Jones said that he and Jeff Carpenter  
14                  were both part of the stay program, which is equivalent to  
15                  the severance program. He testified -- the CFO testified  
16                  that Jeff Carpenter and Keith Jones worked together on the  
17                  program to set other people's stay bonuses.

18                  Mr. Friedman says if you lie you don't  
19                  remember what you said, and he takes issue with  
20                  Jeff Carpenter. Jeff Carpenter, though, covered a lot of  
21                  ground. He's been accused of using different words, but  
22                  you'll see that even though he said it in different words  
23                  they mean the same thing. And that is human not to pair it,  
24                  the same words, every time for the same meaning.

25                  For example, selected employees were part

1 of the stay-bonus program. Stay bonus -- stay bonuses paid  
2 to employees is the same program and the same employees. If  
3 you call it selected corporate employees, that's who was  
4 part of the stay program beneath Jeff Carpenter.

5 Severance and pay to stay, Keith Jones  
6 admitted that those two words or phrases mean the same  
7 thing. Cafe Express versus Cafe Brazil, this is human to do  
8 that.

9 But Brian Potashnik reminds me of one of  
10 those squeeze dolls. All he says is "never happened". Stay  
11 program that Cheryl Potashnik said existed, Keith Jones said  
12 was the plan, he says that never happened. Brian Potashnik,  
13 like the squeeze doll, says discussions of severance never  
14 happened with any employees. Brian Potashnik said  
15 Jeff Carpenter ultimately wasn't that important and he never  
16 had him tour with perspective purchasers; but we showed you  
17 the Emails where Jeff Carpenter is marketing the sale to  
18 prospective purchasers, including Cascade, that ultimately  
19 bought the assets.

20 We've talked about some of the biggest  
21 commitments we make in life are oral, and that includes  
22 Brian Potashnik's oral promise to tell the truth under oath.  
23 If you want to look at credibility, look at who's telling  
24 the truth as between Brian Potashnik, who's the one that  
25 looked Jeff in the face and shook hands on it. Who's

1 telling the truth is between those two.

2 You will see from the notes. Look at  
3 Exhibit 70. Jeff may get some dates wrong every once in a  
4 while, he may confuse Cafe Express with Cafe Brazil, but his  
5 story has been generally consistent.

6 Now, there was a time when Jeff Carpenter  
7 made a mistake in the formula, but look at Exhibit 50. This  
8 is where it started. January 17, Keith Jones forwards a  
9 form document. Subject: Document Keith is using. That's  
10 where this language got picked up. It says without  
11 deduction for any compensation paid to any other employees  
12 from any of the employer entities. That formula continued.  
13 And when Jeff realized the mistake he corrected it, because  
14 that's what honest people do.

15 He had no incentive to make that correction  
16 other than that's the right thing to do. Because making the  
17 correction to offset bonuses paid to other employees, it  
18 reduced his damages and it gave Friedman a chance to say he  
19 was lying. But still he didn't stick with the mistake. He  
20 corrected it because that is the right thing to do. And  
21 that is why stay bonuses come off of the formula. It  
22 originated from the form Keith Jones gave to Mr. Carpenter.

23 They also say that Jeff said even at the  
24 end that the stay date for him was until closing. But if  
25 you look at the document used, he said last year after the

1 transaction was announced. That's when he thought he needed  
2 to stay until closing.

3 We've already gone over the timeline. It's  
4 the Potashniks, not Jeff, who changed as long as needed till  
5 closing. Then they want to make it come up through  
6 transition. He's willing to work with them on that. Then  
7 Brian Potashnik says you can leave, you'll get paid either  
8 way, and Cheryl asked him to stay through transition and he  
9 does so. They changed as long as needed, not Jeff  
10 Carpenter, and he did what they asked him to do.

11 With respect to claims that the parties  
12 were still negotiating, this is not a deal where we were  
13 trading documents back and forth before we start what we're  
14 doing. The handshake deal was made with Brian Potashnik and  
15 Jeff stayed and continued to work. It is Brian Potashnik  
16 who said he would document it in writing at Jeff's request.  
17 Brian never said it had to be in writing. And after not  
18 fulfilling that promise, they asked Jeff to take a stab at  
19 it, and he did a bad job.

20 If Jeff suggested something more, that  
21 doesn't mean you don't enforce the deal made on a handshake  
22 deal. For example, if someone asks me to mow their lawn and  
23 I start mowing it and I'm partly through and I decide and  
24 say could I have a little more, that doesn't mean we didn't  
25 have a deal.

1                   If a secretary says I have this salary and  
2                   bonus and they shake hands on it and she continues to work  
3                   and do what they asked her, if she says I think I should be  
4                   entitled to more, that doesn't change the deal on her salary  
5                   and bonus. If it did, it would have consequences for  
6                   everyone; because that would mean anytime anyone asks for an  
7                   additional term for something more that would mean they have  
8                   nothing, nothing under the prior deal. And that would have  
9                   consequences beyond this case.

10                  Here, Jeff accepted Brian's handshake deal  
11                  by staying on. That act accepted the deal. And parties can  
12                  talk about additional terms or propose later additional  
13                  terms, but that doesn't prevent you from enforcing the terms  
14                  Brian agreed on on October 13, 2006, when he entered the  
15                  handshake deal.

16                  Mr. Friedman say this whole case is about  
17                  Jeff Carpenter, but the rules involved in this case are  
18                  bigger than Jeff Carpenter. They apply to folks like those  
19                  Mark Jones talked about living in affordable housing. It's  
20                  nurses, it's teachers, it's firefighters, it's those who a  
21                  need fresh start for their American dream. The rule  
22                  concerning handshake deals in Texas applies to everyone.  
23                  Whether you are slapping tar on a roof or you are an  
24                  executive, that rule protects everyone.

25                  According to the Potashniks, they can enter

1 those agreements, those handshake deals, never say no, never  
2 say stop, never say I don't think your agreement covers this  
3 or we think we have an out until after the employee has done  
4 all the work. According to the defendants, whether or not  
5 an employee gets paid isn't based on the rules we have in  
6 Texas. It is based on their whim and whether they decide to  
7 do it or not.

8 It is the defendants -- it's  
9 Brian Potashnik who said he would put this in writing. They  
10 let Jeff Carpenter work all the way through the date they  
11 needed him, told him he would get paid either way, and then  
12 only after they got all that did they say no deal. At no  
13 time did anyone say no deal before.

14 Cheryl Potashnik says she looked Jeff in  
15 the eye and said, "I would never screw you on this." If  
16 there was no deal, there's not a need to say that type of  
17 thing. We know how hard you've worked. You've earned it.

18 With respect to the reasonable value of  
19 services performing compensable work, this is Question 8.  
20 When you look at this question, valuable materials  
21 furnished, valuable services. On that question the valuable  
22 services are that Jeff stayed but the defendant didn't pay.

23 Even if you find there was no agreement,  
24 the answer to Question 8 and to the one similar for annual  
25 bonuses should be that his staying was a valuable service



1 for which he should be compensated. It's Brian Potashnik  
2 that put a value on those services. And in this case that's  
3 just over \$927,000. That's actually lower than what Brian  
4 initially said he was willing to pay, because the original  
5 estimate was \$1,020,000. That is a specific amount and  
6 shows that there was a formula at that time.

7 Now, as to discrepancies between the two  
8 deals, keep in mind there are two times that this was talked  
9 about. The first one was when Brian met in May of 2006 at  
10 his home with Jeff Carpenter. That's when he announces he's  
11 selling the business. That's when he's telling  
12 Deepak Sulakhe that Jeff may never have to work again if  
13 things go through. It's later, the October deal, remember.  
14 This was around the time, the letter of intent, and that is  
15 in the exhibits.

16 You have the date. It was shortly before  
17 that on October 13th they met at Cafe Express. He informed  
18 me that I would receive three percent minimum for all gross  
19 compensation from the sale transaction, less closing cost of  
20 brokerage fees, attorney's fees related to the transaction,  
21 other normal closing costs, and less any deductions for any  
22 compensation paid to any other employees.

23 Now, the reason he used minimum here is  
24 because they had -- they had estimated a certain amount of  
25 closing costs and Jeff is putting that in there. But this

1 exhibit, this is Exhibit 70, Jeff wrote these notes shortly  
2 after the deal went south.

3 If you look through those notes and other  
4 documents in the case you will find that Jeff, like most  
5 humans, sometimes used different words for the same thing.  
6 He and Keith Jones, working together on the stay-bonus  
7 programs at times, called them different things; but the  
8 Emails are in evidence as between Jeff and Keith working to  
9 set those bonuses for other people. Sometimes people get  
10 dates wrong; sometimes they use the wrong word.

11 In fact, if you look at the closing  
12 documents for the -- the closing memos for the asset sale  
13 you'll see that in this multimillion-dollar deal at the top  
14 of the escrow documents you'll see in 2008 they start to get  
15 dates wrong. That is human. What's not human is someone  
16 like Brian Potashnik, who's like a squeeze doll, and Jeff  
17 says never happened, never happened, never happened.

18 We called them first so they got a chance  
19 to tell their story first. Mr. Friedman would have you  
20 believe we called them first because we wanted to hear what  
21 they said, but you saw me impeach Brian Potashnik  
22 and Cheryl Potashnik with their depositions. They've given  
23 their depositions. Jeff knew what they were already going  
24 to say. This was not a surprise.

25 At bottom line in this case, the rules that

1 get applied here apply to everyone to protect everyone. And  
 2 those rules only help people if jurors choose to enforce  
 3 them. You are the conscience of the community in this case  
 4 and you can put the honor back in handshake deals in Texas.

5 Thank you.

6 THE COURT: Thank you, Ms. Gibson.

7 Ladies and gentlemen, that concludes the  
 8 closing arguments. We're going to go over these last two  
 9 pages of the charge. Then we'll ask that you retire to the  
 10 jury room.

11 Please go to Page 22, the second-to-last  
 12 page in the charge. This page contains instructions for the  
 13 presiding juror. We'll start at the top of the page.

14 (Remainder of charge read aloud)

15 THE COURT: So we're going to ask you to go  
 16 back there, and Rick will bring to you everything that I  
 17 just said. Leave those -- these things here, leave those  
 18 with Rick. Leave them on the ledge there.

19 (The jury exited the courtroom.)

20 (Deliberations held)

21 (Lunch recess taken)

## 22 JURY QUESTIONS

23 THE COURT: Mr. Friedman is suggesting that  
 24 I would say give the terms ordinary meaning.

25 MS. GIBSON: Okay.

1 THE COURT: Do you object to that?

2 If there's an instruction in there, usually  
3 I put the instruction, "If the word has a legal definition,  
4 use that; otherwise, give it its ordinary meaning."

5 MS. GIBSON: I think that's in there. I  
6 think that's in the charge.

7 THE COURT: Okay.

8 I would just say please re-read the charge.

9 MS. GIBSON: I just thought the general --  
10 I thought the general instruction said that.

11 THE COURT: It probably did.

12 I instruct you to use the word in a way  
13 that is different from its ordinary meaning. Use the  
14 meaning I gave you, which would be the proper legal  
15 definition. It didn't say, otherwise, give it the --

16 MS. GIBSON: I think that implies ordinary  
17 meaning.

18 THE COURT: Right. It does.

19 MR. L. FRIEDMAN: The charge conference has  
20 been closed, Judge.

21 (Laughter)

22 MR. L. FRIEDMAN: You can put your  
23 objection on the record.

24 (Laughter)

25 MR. L. FRIEDMAN: Jump in a lake.

1 THE COURT: Jump -- that's right.

2 Okay. You ready, Vikki?

3 The jury sent out a question. "Could we  
4 get a clarified explanation of the term 'possibly  
5 performable'?" That's in reference to Question 6. And my  
6 response is, "Thank you for your question. You should give  
7 those terms their ordinary meaning."

8 And no objection from plaintiff?

9 MS. GIBSON: No objection.

10 THE COURT: And there was a slight  
11 objection from --

12 MR. L. FRIEDMAN: Yeah. No, we object,  
13 Your Honor. We think that the proper response should be to  
14 instruct the jury to reread the charge. So we'd have to  
15 object. Please note my objection.

16 THE COURT: All right. The objection's  
17 noted on the record.

18 MR. L. FRIEDMAN: And the ruling, please?

19 THE COURT: Your ruling [sic] is overruled.  
20 I'm going to --

21 MR. L. FRIEDMAN: My objection is  
22 overruled. I don't make rulings.

23 (Laughter)

24 THE COURT: Okay.

25 MR. L. FRIEDMAN: You make rulings.

1 THE COURT: I think you've got me -- you  
2 had me worn down.

3 MR. L. FRIEDMAN: But if you want me to  
4 overrule your ruling, I'm available for volunteer work.

5 (Off the record)

6 (Deliberations resumed)

7 (End of proceedings)

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1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Vikki L. Ogden, Official Court Reporter in and for  
4 the County Court at Law Number 5 of Dallas County, State of  
5 Texas, do hereby certify that to the best of my ability the  
6 above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the parties  
9 to be included in the Reporter's Record, in the above-styled  
10 and -numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that the total cost for the  
13 preparation of the Reporter's Record is \$502.00 and will be  
14 paid by Friedman & Feiger, LLP.

15 WITNESS MY OFFICIAL HAND this the 22nd day of October,  
16 2018.

17  
18  
19 /S/ Vikki L. Ogden

20 VIKKI L. OGDEN, Texas CSR# 6309  
21 Official Court Reporter  
22 Dallas County Court at Law No. 5  
23 600 Commerce Street, Floor 5  
24 Dallas, Tx. 75202  
25 (214)653-6443  
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REPORTER' S RECORD

VOLUME 11 of 14

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS

Trial Court Cause No. CC-08-02072-E

04/29/2019 6:14:22 PM

JEFFREY W. CARPENTER,

) IN THE DALLAS COUNTY  
) Clerk

Pl a i n t i f f ,

VS

) COURT AT LAW NO. 5

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC. , ET AL,

Defendants.

) DALLAS, TEXAS

TRIAL ON THE MERITS

On the 1st day of February, 2018, the following proceedings came on to be heard within the presence of a jury, in the above-entitled and -numbered cause; and the following proceedings were had before the HONORABLE MARK GREENBERG, Judge presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by Computerized Stenotype Machine.



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ALSO PRESENT: Steve Page, A/V Technician

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P R O C E E D I N G S

February 1, 2018

(Deliberations continued)

(Mr. Sanford and Mr. L. Friedman are not present in the courtroom.)

JURY QUESTIONS

THE COURT: Question 8 is the quantum meruit.

MS. GIBSON: Quantum meruit for the asset sale?

THE COURT: For the asset sale.

MS. GIBSON: Okay.

THE COURT: What was the -- the jury's question was, "What was the final bonus calculation from the three-percent deal?" My general instruction would be to use your best collective memory.

MR. J. FRIEDMAN: Yeah.

MS. GIBSON: Can you -- would you tell them if they disagree that they can ask the court reporter to check them? If they disagree on the testimony, that they can ask the court reporter?

MR. DONOHUE: I don't think -- I'd say I think either -- use your best collective memory is the answer.

MR. J. FRIEDMAN: They could have taken

1 COURT' S RULING

2 THE COURT: All right, and that motion's  
3 denied.

4 DEFENDANTS' MOTION FOR MISTRIAL

5 MR. L. FRIEDMAN: And then --

6 THE COURT: I'm sorry.

7 MR. L. FRIEDMAN: -- and then as a result  
8 I'd like to ask for another mistrial.

9 COURT' S RULING

10 THE COURT: Okay. And that's denied also.  
11 Let's bring them in.

12 (The jury entered the courtroom.)

13 THE COURT: Welcome back and good morning,  
14 ladies and gentlemen.

15 Who was our presiding juror?

16 JUROR NUMBER 1: I am, Your Honor.

17 THE COURT: Thank you. Is it Ms. Serachi  
18 (phonetic)?

19 JUROR NUMBER 1: Ciriaci.

20 THE COURT: Ciriaci. I'm sorry.

21 JUROR NUMBER 1: That's close.

22 VERDICT

23 THE COURT: I'm going to read the jury  
24 questions and your responses so that your verdict becomes  
25 part of the record in the case.

1 Question Number 1 asked, Did Jeff Carpenter  
2 and Southwest Housing Management agree that Southwest  
3 Housing Management would pay one or more annual bonuses to  
4 Jeff Carpenter covering the period of March 15, 2005,  
5 through March 15, 2007? To that question you responded no.

6 Question Number 2 asked -- because of your  
7 response to Question Number 1 you were not required to  
8 answer Question Number 2, and you did not. Because of your  
9 response to Question Number 2 you were not required  
10 to answer Question Number 3, and you did not.

11 Question Number 4 asked, Did any of the  
12 defendants below and Jeff Carpenter agree on October 13,  
13 2006, to pay Jeff Carpenter, one, three percent of the total  
14 of gross asset-sale revenue to sellers, less normal closing  
15 costs, less sale-proceed bonuses paid to employees; two, if  
16 Jeff Carpenter would stay as long as needed on to help make  
17 the asset sale happen? To that you responded yes as to  
18 Affordable Housing Construction; yes as to Southwest Housing  
19 Development; yes as to Southwest Housing Management; and yes  
20 as to Brian Potashnik.

21 Question Number 5 asks, For each defendant  
22 for whom you answered yes in Question 4, did that defendant  
23 also fail to comply with the agreement? As to Affordable  
24 Housing Construction you responded yes; as to Southwest  
25 Housing Management -- Development -- you responded yes; as

1 to Southwest Housing Management you responded yes; as to  
2 Bri an Potashnik you responded yes.

3 Question Number 6 asked, As of October 13,  
4 2006, was the agreement found in Question 4 possibly  
5 performable in less than one year? You responded yes.

6 Question Number 7 asked, What sum of money,  
7 if any, if paid now in cash, would fairly and reasonably  
8 compensate Jeff Carpenter for his damages, if any, that  
9 resulted from such failure to comply with the agreement? To  
10 that you responded \$928,020.76. That's 928, comma, 020,  
11 point 76.

12 Question Number 8 asked, Did Jeff Carpenter  
13 perform compensable work staying on as long as needed to  
14 help make the asset sale happen for any of the named-below  
15 defendants for which he was not compensated? As to  
16 Afford -- as to all defendants you responded no. Because of  
17 your response to Question 8 you were not required to answer  
18 Question 9, and you did not.

19 Question Number 10 asked, Did Jeff  
20 Carpenter perform compensable work for Southwest Housing  
21 Management for which he was not compensated, excluding any  
22 staying on to help make the asset sale happen? To that you  
23 respond no. Because of your response to Question Number 10  
24 you did not need to answer Question Number 11, and you did  
25 not.

1 Question Number 12 asked, Which, if any, of  
2 the defendants were engaged in a joint enterprise in  
3 connection with the asset sale? As to Affordable Housing  
4 Construction you responded no; as to Southwest Housing  
5 Development you responded no; as to Southwest Housing  
6 Management you responded no; as to Brian Potashnik you  
7 responded no.

8 Question 13 asked, Which, if any, of the  
9 defendants were engaged in a joint venture in connection  
10 with the asset sale? As to Affordable Housing you responded  
11 no; as to Southwest Housing Development you responded no; as  
12 to Southwest Housing Management you responded no; as to  
13 Brian Potashnik you responded no.

14 Question 14 asked, Is Brian Potashnik  
15 responsible for the conduct of the entities named below?  
16 And as to Affordable Housing Construction you responded yes;  
17 as to Southwest Housing Development you responded yes; as to  
18 Southwest Housing Management you responded yes.

19 And then going to the certificate page you  
20 had two options. The first option was our verdict is  
21 unanimous; and the second option was your verdict is  
22 not unanimous. The five of you agreed to each and every  
23 answer and have signed the certificate below, and you opted  
24 for the second choice. And so five of you joined in the  
25 verdict.

1                   You could have had six agree on some  
2                   answers but you didn't have six agree on all, but the five  
3                   who joined in the verdict each joined in every question that  
4                   was answered; is that correct?

5                   JUROR NUMBER 1: That's correct,  
6                   Your Honor.

7                   THE COURT: Okay.

8                   And I'm going to poll the jury and I'm  
9                   going to ask if you joined in the verdict. And if you  
10                  joined in the verdict, if you would say yes loud enough for  
11                  the court reporter to -- to hear you. If you did not, if  
12                  you would say no loud enough for the court reporter to hear  
13                  you. I'm going to refer to you by numbers.

14                   **JURY POLLED**

15                  THE COURT: Ms. Ciraci, being number one,  
16                  Juror Number 1, did you join in that verdict?

17                  JUROR NUMBER 1: Yes, sir.

18                  THE COURT: Juror Number 2, did you join in  
19                  that verdict?

20                  JUROR NUMBER 2: Yes.

21                  THE COURT: Juror Number 3, did you join in  
22                  that verdict?

23                  JUROR NUMBER 3: Yes.

24                  THE COURT: Juror Number 4, did you join in  
25                  that verdict?



1 JUROR NUMBER 4: Yes.

2 THE COURT: Juror Number 5, did you join in  
3 that verdict?

4 JUROR NUMBER 5: Yes.

5 THE COURT: Juror Number 6, did you join in  
6 that verdict?

7 JUROR NUMBER 6: No.

8 THE COURT: Okay. Very good.

9 Ladies and gentlemen, we thank you. This  
10 concludes your jury service. We thank you very much.

11 I thank you. Our court reporter -- the  
12 official court reporter for this court is Vikki Ogden. She  
13 joins me in thanking you. And our bailiff for all of our  
14 trials is Rick Wilson. He joins me in thanking you. The  
15 attorneys thank you. Most importantly, the parties to the  
16 lawsuit thank you.

17 (Mr. Donohue is entered the courtroom.)

18 You know that the events underlying this  
19 case occurred more than 10 years ago. So one thing that  
20 everyone agrees on, whether they prevailed in the suit or  
21 not, is that this is a case that needed to be resolved. And  
22 because of your jury service we are able to resolve this  
23 case. We will take your verdict and reduce it to a judgment  
24 and the judgment will close this case. And for that we  
25 thank you very much.

1 Any restriction I placed on you to not  
2 discuss the case with anyone else is, of course, lifted at  
3 this point. You're welcome to discuss the case with the  
4 attorneys and the parties to the lawsuit. You're welcome to  
5 discuss the case with anyone else once you leave the  
6 courthouse, but that is 100 percent up to you. If you want  
7 to discuss the case with them, you're welcome to. If you  
8 don't want to discuss the case to [sic] them, you don't have  
9 to. It's 100 percent up to you.

10 The law allows the attorneys to request  
11 from you an affidavit if they believe an affidavit is called  
12 for. If they suspect jury misconduct, if you want to  
13 cooperate with the attorney, you're certainly welcome to do  
14 that. If you do not want to cooperate with the attorney,  
15 you need not. Again, that is 100 percent up to you, but  
16 that is an instruction I am required to give you by law.

17 With that I think, again, we're going to  
18 thank you and we're going to break. You're in the jury box  
19 now. We're going to ask you to go back to the jury room.

20 If you want to talk to anybody out here, go  
21 from the jury room right back out here. If you don't want  
22 to talk to anybody, the bailiff takes you out through this  
23 side hallway and you'll just kind of go around everybody.

24 So we'll ask you to come back to the jury  
25 room now.

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(Off the record)  
(End of proceedings)

1 THE STATE OF TEXAS

2 COUNTY OF DALLAS

3 I, Vikki L. Ogden, Official Court Reporter in and for  
4 the County Court at Law Number 5 of Dallas County, State of  
5 Texas, do hereby certify that to the best of my ability the  
6 above and foregoing contains a true and correct  
7 transcription of all portions of evidence and other  
8 proceedings requested in writing by counsel for the parties  
9 to be included in the Reporter's Record, in the above-styled  
10 and -numbered cause, all of which occurred in open court or  
11 in chambers and were reported by me.

12 I further certify that the total cost for the  
13 preparation of the Reporter's Record is \$118.00 and will be  
14 paid by Friedman & Feiger, LLP.

15 WITNESS MY OFFICIAL HAND this the 21st day of October,  
16 2018.

17  
18  
19 /S/ Vikki L. Ogden

20 VIKKI L. OGDEN, Texas CSR# 6309  
21 Official Court Reporter  
22 Dallas County Court at Law No. 5  
23 600 Commerce Street, Floor 5  
24 Dallas, Tx. 75202  
25 (214)653-6443  
Certification Expires: 12/31/18

REPORTER'S RECORD

VOLUME 12 of 14

FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS  
04/29/2019 6:14:22 PM  
Clerk

**Trial Court Cause No. CC-08-02072-E**

JEFFREY W. CARPENTER,  
Plaintiff,

VS

SOUTHWEST HOUSING DEVELOPMENT  
COMPANY, INC., ET AL,  
Defendants.

IN THE DALLAS COUNTY

COURT AT LAW NO. 5

DALLAS, TEXAS

TRIAL EXHIBITS

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## EXHIBIT INDEX

PLAINTIFF'S NO.	DESCRIPTION
1	Phone Conversations
2	Employment Agreement
3	Email
8	Recap of Expenses and Bonuses
9	Email
10	Magazine Cover
11	Letter of Intent
12	Purchase and Sale Agreement
13	Schedule A
14	Email Cover Sheet
15	Escrow Agreement (First Amendment)
16	Purchase and Sale Agreement (First Amendment)
17	Escrow Agreement (Second Amendment)
18	Escrow Agreement (Third Amendment)
19	Escrow Agreement (Fourth Amendment)
20	Escrow Agreement (Fifth Amendment)
21	Consulting and Asset Management Services Agreement
22	Separation Agreement
23	Email
24	Email
27	Escrow Agreement (Sixth Amendment)
28	Escrow Agreement (Seventh Amendment)

**EXHIBIT INDEX (CONT'D)****PLAINTIFF'S****NO. DESCRIPTION**

29	Escrow Agreement (Eighth Amendment)
30	Escrow Agreement (Ninth Amendment)
31	Escrow Agreement (Tenth Amendment)
32	Email
33	Closing Memorandum
34	Closing Memorandum
35	Email
36	Franchise Tax Report
37	Franchise Tax Report
38	Franchise Tax Report
39	Certificate of Termination of a Domestic Entity
40	Southwest Housing Associate Handbook
40a	Certificate of Termination of a Domestic Entity
41	Email
49	Email
50	Email
51-1	Handwritten List
52	Notes
53	Expense Report
54	Expense Report
55	Declaration of Sandy Dixon
56	Certificate of Non-Foreign Status

**EXHIBIT INDEX (CONT'D)****PLAINTIFF'S****NO. DESCRIPTION**

57	Certificate of Non-Foreign Status
58	Email
59	Memorandum of Agreement
60	Email
61	Explanatory Note
62	Email
63	Amendment to Employment Agreement
64	Email
65	Email
66	Email
67	Email
68	Email
70	Jeff Carpenter's Notes



**EXHIBIT INDEX (CONT'D)****DEFENDANTS'**

<b>NO.</b>	<b>DESCRIPTION</b>
4	Employment Agreement
13	Amendment to Employment Agreement
14	Jeff Carpenter's Personal Notes
24	Gmail
25	Email

## CAUSE NO. CC-08-02072-E

JEFFREY W. CARPENTER,	)	IN THE DALLAS COUNTY
	)	
Plaintiff,	)	
	)	
VS	)	COURT AT LAW NO. 5
	)	
SOUTHWEST HOUSING DEVELOPMENT	)	
COMPANY, INC., ET AL,	)	
	)	
Defendants.	)	DALLAS, TEXAS

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I, Vikki L. Ogden, Official Court Reporter in and for the County Court at Law No. 5 of Dallas County, Texas, do hereby certify that the following exhibit constitutes a true and complete duplicate of the original exhibits admitted into evidence during the proceedings in the above-entitled and -numbered cause as set out herein before the Honorable Mark Greenberg, beginning January 22, 2018.

WITNESS MY OFFICIAL HAND on this the 22nd day of October, 2018.

/s/ Vikki L. Ogden

Vikki L. Ogden, Texas CSR# 6309  
Official Court Reporter  
Dallas County Court at Law No. 5  
600 Commerce Street, Floor 5  
Dallas, Texas 75202  
(214)653-6443

**CONVERSATION BETWEEN  
JEFF CARPENTER AND BRIAN POTASHNIK**

JC = Jeff Carpenter  
BP = Brian Potashnik

SPEAKER	CONVERSATION
JC	Hello?
BP	Jeff?
JC	Hey Brian. How ya doing?
BP	Hey. What's going on?
JC	Uh, just trying to wrap up stuff.
BP	I know you had called twice but, last night uh, was my son's birthday and I didn't have my phone with me. so . . .
JC	Right.
BP	. . . I just got the message this morning.
JC	Well, um, I was gonna call ya last night, but uh, but or talk to you today just to uh. follow-up about you know, our uh, verbal agreements and so forth. Keith sent me a uh, a Separation Agreement last night.
BP	Uh-huh.
JC	That you know, because Cheryl said you know, listen I know you're in a, a financial crunch and you know, with everything going on we can give ya, you know, 30, you know, we'll pay you an extra month to help you through this.
BP	Right.
JC	You know . . .
BP	Right.
JC	. . . as the deals close you know, we're, we're gonna make honor on our word, what we said and you know, as we've talked that we'll continue to work to put this in writing. Well, I get this Severance Agreement and it basically says I sign my life away for the 30 days and that there's you know, that I have nothing to stand on. You know.



BP	Well, I mean, I don't know what to say, I mean it's, I don't even know other than the fact that our attorneys are requiring us that anybody that's leaving that's getting uh, paid severance to have that signed. That's what Cheryl told me so, I think that's what you're talking about. Um, and as far as our agreement goes, where we compensate you, as we promised, it's gonna depend on where we end up in all of this. You know. I mean, we've got Bank of America calling me right now and telling me they're ready to foreclose on Skyline because there's a three million dollar gap in the financing and the property's been performing so poorly, you know. And that's not to mention you know, other deals that are getting re-sized. So, we don't even know where we're gonna end up in terms of what we end up getting out of this if anything, you know? I mean, I don't know how to make a commitment, you know, based on not knowing whether or not you know, Cheryl and I are gonna end up with anything other than being in bankruptcy. I mean that's the reality. Jeff, Cascade still hasn't closed on one deal – hasn't closed one deal.
JC	Uh hmm.
BP	You know, and when they do close, who knows what the price will be? Who knows what, you know, it would be since that um, um, things like Skyline now and Heather Bend and you know, Aldine and all these deals that are re-sizing. You know, where are we gonna end up? I mean, it's uh, it's not a good situation. I mean, it's not like we're sitting here you know, sitting on a mountain of cash. Not to mention the fact that you know, our legal fees have just been astronomical in defending ourselves and defending the company. And you know, that's the cost of doing business Jeff. I mean, there's, there's just no, there's no way that it can be looked at any other way, you know. I mean ya know, I didn't go and rob a bank. You know, this is something that's directly related to the business. We're trying to negotiate with them now on these, you know, Dallas deals that they think might be tainted and I mean, it's, it's just a big mess.
JC	Uh hmm.
BP	So, you know, if I don't know where we stand and where we're gonna end up, as opposed to whether or not we would be bringing an indictment and you know, Basil telling me done deal, what am I supposed to do? I mean, I, I don't understand. What, what is it that I'm supposed to do?
JC	Do for me?
BP	Yea.
JC	Well, I can't . . .

BP	I can't even pay my bills. I can't, you know, I'm trying to stay out of bankruptcy. I have Bank of America calling me now telling me you know, they're ready to put the company and me and Cheryl personally into bankruptcy. I mean, what do you want me to do? I mean, I'm telling you that we're, we're going to dig ourselves out of this thing and then hopefully, you know, at the end of the day, get something out of it from Cascade and get the deal closed and pay the costs that we have to defend ourselves and have money left over so that we can, you know, give you a bonus, give Sara a bonus and give Keith a bonus or whatever. But, you know, I mean, right now, nobody's asking and nobody is, you know, everybody understands the situation. You know, I, I don't, I don't know what else to tell you, you know? I mean, if you don't wanna sign something that you think is detrimental to you in some way, then don't sign it. But, I, I don't know what else to tell you, you know?
JC	Uh hmm.
BP	I mean, you have Cheryl and I both committed to you that when things work themselves out that there will be a bonus if there's anything there at the end of the day that we have where we can you know, actually give out bonuses. And, it has to be done, you know, on a level of trust and you know, it would be absolutely impossible to put anything in writing because there's so many moving parts to this.
JC	Uh hmm.
BP	I mean, look at Skyline alone that's three million bucks. That's just one deal. Another one, eight hundred thousand, you know? Uh, I mean, it just goes on and on. And, and our personal guarantees are already up there. You know? And I'm sick of, you know, this shit with Basil dragging on and on. And, for the life of me can't understand why these guys haven't been able to at least close one deal yet. So, you know, um, I mean, we're fucked right now. Unless Cascade gets their shit together and we figure out a way to salvage these deals and you know, at the end of the day have something left over – there isn't gonna be anything. You know?
JC	Uh hmm.
BP	I mean that's the reality. And I don't, I don't know what else to say other than, you know, it's obvious based on what's going on that that's the situation that we're in. I mean, and, you know, it sucks because obviously, at this point, we thought we'd have everything closed and that we would have some money. Um, we didn't think we would get, you know, would have been indicted. You know, I've been hearing for two years plus from Mike Uhl that you're not gonna get indicted, don't worry. They don't have a case. They don't have a case. You know. You know, we've had uh, McKinney's going after the contract again three times. Vegas, I don't know what? Four times? You know, those were two deals that we talked about getting some money out of. But, you know, at the end of the day, you've got Paul now in that deal because he, you know, was the one that got the loan and this is all

	playing with the lock box I, I still don't even understand. Um, but, it just goes on and on, you know?
JC	Uh hmm.
BP	It just goes on and on.
JC	Well, it certainly has definitely not been uh, uncomplicated.
BP	Well, it's beyond complicated. It's a cluster fuck is what it is. And that's the whole problem right now. We just have no idea where this thing is going to uh, to settle out, you know. And I have the additional pressure, as does Cheryl on top of it, of not knowing where we're going to end up. You know, in our own lives personally and being separated as a family, God forbid and you know, I mean, I just don't uh, I don't know what to tell you. But it's, it's, it's a shitty situation. So, you know, if you want to talk to Cheryl about it, I'm sure she'll be happy to talk to you about it. But, I, I don't know what else to say. You know?
JC	Oh, on Monday when I met with Cheryl's, you know, she said that, you know, you know, um, you know, I know that you need something in writing. I know that, you know, there's gonna have to be some carve outs and all that but, I, I understand. And let's work it together over the next couple weeks and do something. You know . . .
BP	Well um . . .
JC	But . . .
BP	I mean, you're gonna have to talk to her about that because I don't, I don't see how you can possibly put something like this in writing right now the way things are, you know. I mean, why don't you explain to me how, how it can be done because you know, it's an impossibility. I mean, talk to Sara. No, nobody's got any agreement to get any bonuses on anything. You know, everybody's just saying, you know, that they know Cheryl and I are honorable and at the end of the day, if, you know, this thing ends up where we have money where we can bonus people out, then we'll do it. And at this point, that's the best that we can do. I mean there's not gonna be anything else because there's, there's no way of being able to memorialize anything that's in that, you know?
JC	Maybe it's just memorializing what you just said.
BP	How do you memorialize when someone says trust me?
JC	Brian, you told me, what a dozen times that we were gonna have it memorialized.
BP	With what?



JC	What's that?
BP	What? Memorialize what?
JC	The, the, the bonus structure. The current . . .
BP	The bonus structure . . .
JC	. . . bonus structure.
BP	. . . of what? We, we don't know where this thing is gonna end up. I, I, that's what I'm trying to explain to you. We don't know if there's gonna be any money to bonus. I mean, we are completely under water right now. How can I make a commitment on a bonus when I can't even pay the bills? I mean, I've got Bank of America forcing me into bankruptcy over Skyline. That's just one deal, you know? And I'm stuck in litigation with NAPICO. I've got, you know, all these other deals. You know, Aldine Bender and you know, all the tax issues that relate to the exemptions on these deals. All the, you know, bull shit with Charter Mac and now they're, you know, harping about you know, we don't have money to re-size Heather Bend. You know, I mean, at the end of the day, you know, we may be in a position where we have to file bankruptcy. And the only thing that we're gonna have to hold onto, if we can even hold onto it, is our house which we would probably need to figure out a way to sell it or to do something just to pay lawyers – to keep our freedom. So, how do you, what is there to memorialize?
JC	Uh hmm.
BP	I mean, we're trying to dig ourselves out of this thing for everybody's benefit. But, we're so upside down right now and there's so many issues outstanding that we need to get cleared up before we know where we stand that there's no way that you can put anything like that in writing. It's impossible. If we could we would, but we can't.
JC	But on the Separation Agreement, I'm supposed to waive everything.
BP	I, I don't even know – I, I don't even remember that – I don't even know what it is, I mean, it's a . . .
JC	Well, I didn't either until late last night.
BP	Well, I guess, you know, Cheryl's been advised that you know, when employees leave if they're getting something, you know, if they're getting any severance that it's something that they need to sign in order to get it. Okay? It's a legal issue. You know, and it's been told to her by the lawyers that you know, if someone's leaving the company and they're getting a severance that they need to sign it and it's typical. And if it's not, you know, I, I don't know what else to say.

JC	All right.
BP	You know? I mean, let's see if we can turn some of this shit around and make some of these things go away so that you know, we can take care of Jeff Carpenter. All right?
JC	Speechless.
BP	Wow. All I can say is, is that, we're doing our best to try and dig ourselves out of this and until I get some clarity as to where we stand and the fact that we're not gonna get in a position of having to bankrupt the company and ourselves personally and lose everything, we'll be in a better position to – you and I have discussions about bonuses. But, right now, you know, I, it's just not something that we can do if we had the money.
JC	Well, I, you know, I certainly understand.
BP	It's impossible.
JC	What's that?
BP	I said, "It's impossible."
JC	Well, I under, I certainly understand the fact that . . .
BP	You know, it's not like we don't wanna do it. And even if we did wanna do it, we don't have it. Secondly, you know, this is not a situation that anybody ever expected would happen or that we would, that we would be in right now. And you're just going to have to, you know, trust us that when or if things get to the point where they turn out positive for us that, you know, at that point in time, we'll bonus out based on you know, I don't know, whatever, whatever's left over. I don't know what that is, you know, not with what's going on right now.
JC	Uh hmm.
BP	I mean, it's not that anybody doesn't wanna do it. It's not that anybody's, you know, trying to avoid doing anything. But I mean, we had the same discussion with, with Sara. You know?
JC	I, I don't know.



BP	Well, we did – with everybody. Nobody has any agreements. We're, we're just trying to pay bills – trying to stay out of prison. I mean, what more can I tell you? You know. I'm in the fight of my life right now and on top of that, I've got a company that's under water and I've got a buyer that, not only hasn't closed on anything, but you know, is putting me in a position where I've got banks like Bank of America putting a three million dollar re-sizing on the, on a property that's underperformed so badly that they're threatening, you know, to throw it into foreclosure. And I don't know what effect that's gonna have on Cascade. So, it's just fucked up.
JC	So how am I – excuse me, how do I stay in the loop?
BP	I, I don't know what you mean by that.
JC	Um.
BP	A few weeks ago, you came here and you told me that you had taken another job. Okay? That you were going to work for a American Housing. Okay? And at that point in time, I told you that whether you went to work for them or not or whoever it was that you went to work for that if things out tracked, if things turned out where we end up with something, okay, then we will honus out the people, like yourself, that we feel that you know, are entitled to getting something from that. But, it's not a good situation right now. And it's not a situation where it can even be put, put in writing. I mean, it's impossible. You know?
JC	Well, I guess – well, it's a good thing everybody else is gonna be staying, right?
BP	I don't know. I have no idea what – you know, I don't know who's staying, who's going, you know. I, I have no idea, you know. And as I said, I don't know if the deal is gonna close. Um, I mean, it's a complete cluster fuck. You know? I mean, obviously you know, you're not gonna be dealing with this crap at American Housing. But you know, I'll certainly keep in touch with you and we'll figure out you know, from time-to-time where we're at and hopefully, get through this, that's all.
JC	Okay.
BP	All right? I think Cheryl's going into the office. But if there's anything that you need me for, just give me a call. All right?
JC	All right.
BP	Okay.

END OF CONVERSATION

**CONVERSATION BETWEEN  
JEFF CARPENTER AND CHERYL POTASHNIK**

JC = Jeff Carpenter  
CP = Cheryl Potashnik

<b>SPEAKER</b>	<b>CONVERSATION</b>
JC	You ready? 49 today.
CP	You are?
JC	Yep.
CP	Happy Birthday.
JC	Thanks. Was this what I was supposed to get? Where, where . . .
CP	It doesn't include the severance payment.
JC	. . . where it waives all rights to everything of my concern and, you know, if then, the sale goes through. How we do all that?
CP	It doesn't have anything to do with it.
JC	Yeah it does. It, it says . . .
CP	No, it doesn't.
JC	Well, it says in here – it waives all those rights.
CP	Well, Jeff, you don't currently have any rights.
JC	Okay.
CP	You don't have any rights.
JC	Okay.
CP	You have conversations that we've had. You have intentions that we've had. You have what we intend to do and what we wanna do. You don't have any rights. That's about your employment and the rights that you had under your Employment Agreement and that type of thing. It's a legal document. It's not saying, Jeff you give up any hope of ever getting anything. It's a legal document. It's what you have rights to. And if you think that you have other rights, then you shouldn't sign the document.

JC	Okay.
CP	So, what I was gonna propose to you was – because I know that you have an urgency, and I know you guys are sitting around trying to come up with what, you know, the net number is at the end of the day on the sale and we can walk through that because you guys covered that, you know, 25% of what potential deductions in the purchase agreement are gonna be . . .
JC	Uh hmm.
CP	. . . uh, and we can go through that, we can definitely do that, but, you know, what my proposal to you today was gonna be is that – what I can build into that agreement for you after the (inaudible) of your employment so you have something to have is um, an agreement to pay – in addition to the 20 – the one month severance and your PTO bank and all of that stuff . . .
JC	Uh hmm.
CP	. . . to pay three years of bonus – the minimum bonus even though I'm uh, I'm having to, I'm not, I'm not saying that there was a minimum bonus, but an original Employment Agreement talked about \$50,000. So, to build into your Agreement that um, the leader of the sale employment at the end of the year and that you would be guaranteed \$150,000 pursuant to that Agreement.
JC	Uh hmm.
CP	And then that's something you would have a legal right to have. And then, you know, like I've told you before when we were on the phone with Keith, I've got to be able to see some preliminary on how this deal is gonna shake out before I can start making commitments and go above and beyond that because I need to make sure that, that when all is said and done and it shakes out and everybody else gets paid, that Brian and I have a certain amount of money that we can put towards our defense.
JC	Right.
CP	And until I know that I have that, I'm not making any more commitments. I did not know that, maybe within the next three to four weeks. And I don't have a great feeling that we're gonna be able to (inaudible 3:47 – 3:54)
JC	Right.
CP	Um. But you have to understand that there's investment banker fees, there's transfer fees on the debt, there's legal fees, there's resized escrow (inaudible) costs, you know, Skyline alone, Bank of America asking for \$3 million. Phamer a big part of a million dollars when we close.

JC	Uh hmm.
CP	I mean, I don't know what's gonna happen with that percent now because of a big scare of what interest is doing today. So, you know, at the end of the day, you could not, you know, \$37 million goes like that. You know, it sounds like a lot of money, but on the business side and with all the contingent liability. You know, it's scary. And, the last thing I wanna do is make you commitments that can't be kept because then, you and I are gonna get sideways. And I don't wanna do that. And I don't want (inaudible). But if you're intention is to do that, let's do that now. Then, you know, we should just stop talking and you should do it. But, I really wanna work with you and make sure you're taken care of. But, it's not gonna be - there's no point in making promises that I can't keep and then we end up sideways with each other.
JC	Yeah, I, I, I understand that. Just the way this reads doesn't cover that.
CP	That, that doesn't cover anything having to do with the sale because you don't have any rights under the sale. You have rights under your employment agreement . . .
JC	Uh hmm.
CP	. . . and I have obligations as your employer.
JC	Is, is that why the, there just has never been, even prior to the indictment and everything, why we didn't get something in writing?
CP	Is what why?
JC	This, this, the strategy of being somewhat being non-committal? I mean that . . .
CP	It's the same thing . . .
JC	. . . I've been, I've been trying to get something in writing since, let's see, I - Brian and, you know, informed me in May of '06.
CP	Jeff, maybe it, maybe it just boils down to that we're just not that smart. I don't know what to tell you. But that, it's been . . .
CP	Yeah? (inaudible 6:28 - 6:52)
CP	Call me after you pick 'em up. You know pick ups at 3:00. Oh, oh, you're going back. Okay, well just do that - I'm not gonna - okay, well I'm not gonna be ready for a while so - okay. All right.
CP	Um, because of the way the (inaudible 7:24 - 7:40)

CP	You know it looked one way July 15 <sup>th</sup> or June 15 <sup>th</sup> whenever, I don't remember the exact time frame. But, you know, anticipating another six months of overhead and all the obligations that go along with it um, you know, it really starts to eat away at what's gonna be left.
JC	I, I understand.
CP	You know, and then it was like when, when we got indicted all of a sudden it was like oh my God.
CP	(inaudible 8:19 – 8:30) But, you know, there's just so much concern about what everybody's gonna do and how they're gonna react.
CP	My number one priority is to meet the obligations of the business. You know, we still got the business to practice and continue to operate. (inaudible)
JC	Uh hmm.
CP	And uh, so I mean, that – the uh, the lack of putting things in writing up to this point has just been not knowing what to put in a way that works for everybody. And I just haven't been able to, you know, figure out, figure it out to a point where I'm not afraid that we're leaving ourselves short. And that's why, if I can start to see, I can type up a closing statement and how the bottom line is gonna look then, I can (inaudible 9:29 – 9:35) I mean, I wanna see it. But, if it's a negative at the bottom, where we actually have to owe them, you know?
JC	Uh hmm. No, I understand that portion of it.
CP	But there's a lot of things that could happen between now and then and (inaudible 9:58 – 10:14)
JC	Uh if, you know the uh, the . . .
CP	If you wanna mark that agreement up . . .
JC	Uh hmm.
CP	. . . I'll look at it, you know. But, that's our standard agreement. I need to look at my additional copy and get – (inaudible 10:33 – 10:38)
JC	That what?
CP	Whether to include you.
JC	Right. Keith got an ear full when he sent that to me.

CP	(Inaudible)
JC	It, it – and, and apparently, I spoke to you last night.
CP	You don't remember?
JC	Not much of it.
CP	I knew you were drunk.
JC	Oh I . . .
CP	'Cause you called me and you didn't leave a message. So, I called you back and then I talked to you. And you were like, I didn't call you. I'm like . . .
JC	I, I probably downed a half a bottle of Glen Levit real quick. I was hot to say the least. Um . . .
CP	Well, but the thing is Jeff is that you should, you should always talk to me before you get hot. Because nine times out of 10, probably somebody else made a mistake. (inaudible)
JC	Well, that's fine. So, we talk today. Um, I, I, I understand how the number bear – you know the, the cost of the transaction and all that stuff has gone through. And you know, from day one, I said what about the, you know, the times prior to that when things were good. Uh, about the earned bonuses that weren't distributed. You know unfortunately or fortunately; or however, you want to look at it, I dealt with Brian on most of that. And, it's always the next deal, the next deal, the next deal, the next deal . . .
CP	Things haven't been good around here for a long time.
JC	Oh, we had money coming – we had some money coming in. We closed a lot of deals.
CP	But Jeff, you don't understand that that doesn't mean that things are good. That just means that there is money coming in. That doesn't mean that the money coming in is enough to cover the money that's due out. I mean . . .
JC	Well . . .
CP	. . . in 2005, or back in 2004, when we - Deepak and the allotment group was working to get those pre-allotment loans and all those deals, I mean, it looked like with those pre-development loans we wouldn't have a problem then.
JC	Uh hmm.

CP	You know, the nature of, of real estate and the allotment business is that you never have any cash. It's a very illiquid. You know, I regret some of the decisions that we made and deals that we did and things like that but, I don't think you can really appreciate how much money has been . . .
JC	Well, I've been doing this . . .
CP	. . . lost.
JC	I've been mis - doing this a long time myself and I do understand that. I also understand that other uh, executives and peers were - got paid their bonuses during that time period and wha never did.
CP	They got some of 'em.
JC	I mean, Deepak - it's my understanding and - got paid \$275,000 in '05.
CP	I'd be shocked if that was true.
JC	I got zip.
CP	I'd be shocked if that was true.
JC	That's what I've been told.
CP	I've never seen that.
JC	Well. So, you know, under - I understand the, the floating uh, barometer with the sale and, and all that and the percentage and everything. I would like to have a more firmer commitment, you know, on those three years - which I think is very reasonable.
CP	Well, and like I said, I'd be willing to give you a minimum guarantee of the, of the base line fixed rate which is 150,000. Beyond that, I'm not gonna today put anything in writing. I can't.
JC	But if, if things improve, it could - would be considered on the back end.
CP	Well, that would be (inaudible)
JC	It'd be an additional bonus of that - the balance or however you wanna look at it?
CP	I don't understand the question. I've said, if things improve - I mean, we have a way to compensate you based on expectations that you have - that we've talked about.

JC	Uh hmm.
CP	So, that's all I can do.
JC	Okay.
CP	I'm not gonna put it in writing right now.
JC	How do we stay in touch and communication once I'm gone to see where we stand on certain things?
CP	Call me every day – I don't care.
JC	Okay.
CP	You know, I'm probably gonna have to call you and ask you questions and . . . you know, stay in touch and . . .
JC	Uh hmm.
CP	. . . whatever. I'm not gonna bullshit you Jeff I've told you. I'm not going to. You can come and look at whatever you wanna look at. You wanna see Brian and my savings account and every transaction that we've had since then to keep this company afloat, you can see it. I'm peeved. I'm not bullshitting you.
JC	I, I understand that . . .
CP	I'm sorry that it's happened, I know that. You know? But when, when you take a company like ours that relies on development business and you stop doing development, it's not pretty.
JC	I absolutely agree. It's been certainly both (inaudible) and understand that part of it.
CP	As do I. I mean, you know?
JC	I mean, all we needed to do was keep three deals a year going.
CP	I don't know if that was true but, I don't know if three deals is the number.
JC	Three, three to four.
CP	I don't really know, at this point, what the magic number would have been back then. One thing we needed to do was to do good deals. Not do . . .

END OF CONVERSATION TO JUST BEFORE 16:59 THROUGH 41:10



## EMPLOYMENT AGREEMENT

AGREEMENT (this "Agreement") made as of February 13, 2004, but effective as of the Employment Date (as hereinafter defined), between Southwest Housing Management Company, Inc., a Texas corporation (the "Company"), and Jeffrey W. Carpenter (the "Employee").

WHEREAS, the Company desires that the Employee be employed to serve as Executive Vice President with the Company, and the Employee desires to be so employed by the Company, upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and of the mutual promises, representations and covenants contained in this Agreement, the parties agree as follows:

1. Employment.

The Company hereby employs the Employee and the Employee hereby accepts such employment, subject to the terms and conditions set forth in this Agreement, as its Executive Vice President.

2. At-Will Employment.

Employment under this Agreement shall begin as of March 15, 2004, the date hereof (the "Employment Date") and shall continue at the will of the Employee and/or the Company. Employee understands and agrees that his employment is at will and may be terminated at any time, with or without notice or cause, by the Company or by himself.

3. Duties.

(a) The Employee shall perform the duties and functions assigned to him from time to time, in the sole discretion of the Company, and shall report to the President of the Company or such other person as directed by the President.

(b) The Employee agrees to devote his working time, attention and energies to the performance of the businesses of the Company and of any of its affiliates by which he may be employed, and the Employee shall not, directly or indirectly, alone or as a member of any partnership or other organization, or as an officer, director or employee of any other corporation, partnership or other organization, be actively engaged in or concerned with any other duties or pursuits which materially interfere with the performance of his duties under this Agreement.

4. Compensation.

(a) As compensation for the employment services to be rendered by the Employee under this Agreement, the Company agrees to pay, or cause to be paid, to the Employee a base salary at an annualized rate of \$200,000.00, payable in equal installments bi-weekly. This statement of annualized salary does not represent a contract

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for a year or any other specific period of time.

(b) Bonus structures will be reviewed and revised on an annual basis by the Company. In the first calendar year of employment, the minimum discretionary bonus potential will be \$50,000.00, and will be based on achieving Company objectives. The maximum bonus potential in the first calendar year of employment will be \$200,000, which will be determined based on overall profitability of the organization as a whole. A detailed bonus plan will be provided to the Employee within ninety days of the Employment Date. Any annual change(s) made to the bonus structure will be at the sole discretion of the Company. Employee must be employed by the Company at the end of the first calendar year for minimum discretionary bonus to be considered earned.

**5. Expenses.**

a. The Company shall pay or reimburse the Employee, subject to prior approval and upon presentment of such vouchers, receipts and other supporting information as the Company may require, for all reasonable business and travel expenses which may be incurred or paid by the Employee in connection with the employment of the Employee by the Company in accordance with the Company's standard policies then in effect. The Employee shall comply with such restrictions and shall keep such records as the Company may require of its Employees generally facilitating compliance with the requirements of the Internal Revenue Code of 1986, as amended from time to time, and regulations promulgated there under.

b. The Company shall reimburse the Employee the cost of relocation to the Dallas area in an amount not to exceed \$36,000.00. Employee shall provide the Company with receipts and will receive reimbursement within fourteen days of submission of such receipts.

c. The Company shall provide the Employee with temporary housing in a corporate furnished apartment for a maximum period of ninety days.

**6. Insurance and Other Benefits.**

Employee shall be eligible for twenty days of total Paid Time Off per twelve month period. At the conclusion of 90 days of employment after Employee's Employment Date, Employee is eligible to participate in and receive any other benefits provided by the Company to other Employee employees, generally (including 401(k) plan participation, health insurance, dental coverage, life insurance and short and long-term disability insurance plans in accordance with the terms of such plans), all as determined from time to time by the Company. Company will reimburse the Employee for any COBRA insurance payments that may be incurred up through the date the Employee is eligible for Company benefits. Company shall pay Employee a monthly automobile allowance of \$600.00. Employee will be eligible to participate in Company health club program. Company will adjust Employee's salary in the event the

EMPLOYMENT AGREEMENT - page 2

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Employee's share of the Company provided health coverage for the family exceeds \$4,680.00.

**7. Termination of Employment; Effect of Termination.**

Employee will not be entitled to any compensation or benefits pursuant to this Agreement effective upon the termination of employee's employment, the removal of Employee from the position of Executive Vice President, and/or upon the Employee's death, except as noted below. In the event of death of the Employee prior to the termination of his employment, the estate of the Employee shall thereupon be entitled to receive such portion of the Employee's annual salary and bonus as has been earned and unpaid through the date of his death.

a. In the event Company terminates Employee, Employee will receive severance in an amount equal to six weeks of base salary in a lump sum payable upon such termination.

**8. Representations and Agreements of the Employee.**

(a) The Employee represents and warrants that he is free to enter into this Agreement and to perform the duties required under this Agreement, and that there are no employment contracts or understandings, restrictive covenants or other restrictions, whether written or oral, preventing the performance of his duties under this Agreement. Employee agrees to abide by all policies and practices of the Company as may be implemented from time to time.

(b) Employee acknowledges and agrees that all aspects of his terms, conditions and benefits not addressed herein are governed by the policies and practices of the Company as may be implemented from time to time in the sole discretion of the Company.

**9. Non-Competition and Non-Solicitation Covenants.**

(a) The Employee acknowledges that, during the course of his employment by the Company, the Company will provide to Employee confidential or proprietary information, documents and other materials relating to the Company, its affiliates and their respective business which are not generally known to persons outside the Company (whether conceived or developed by the Employee or others) and confidential or proprietary information, documents and other materials entrusted to the Company by third parties, including, without limitation, any "know-how," trade secrets, customer lists, details of client or consultant contracts, pricing policies, operational methods, marketing plans or strategies, product development techniques or plans, business plans, acquisition plans of the Company or its affiliates that are valuable and not generally known to the competitors of the Company, whether or not in written or tangible form, and including all memoranda, notes, plans, reports, records, documents and other evidence thereof ("Confidential Information"). The Employee further acknowledges that during the course of his employment, he will be the recipient of goodwill generated by the Company's dealings with third parties.

(b) Employee agrees he will not directly or indirectly, during the term of

his employment by the Company, and thereafter, disclose to anyone, or use or otherwise exploit for his own benefit or for the benefit of anyone other than the Company or its affiliates, any Confidential Information. As a member of management, during the term of employment, the Employee will assume a pro-active role in educating subordinate employees regarding the appropriateness of language, behavior and the importance of confidentiality in business matters regarding the Company.

(c) Employee agrees that all Confidential Information conceived, discovered or made by Employee during the term of employment belongs to the Company. Employee will promptly disclose such Confidential Information to the Company and perform all actions reasonably requested by the Company to establish and confirm such ownership.

(d) All Confidential Information relating to the Company and its affiliates shall be the exclusive property of the Company and its affiliates, and Employee shall use all reasonable efforts to prevent any publication or disclosure thereof. Upon termination of Employee's employment with the Company, all documents, records, reports, writings and other similar documents containing Confidential Information, including copies thereof, then in Employee's possession or control shall be returned to and left with the Company.

(e) In addition, Employee shall not, directly or indirectly, during or for a period of one year after the termination of his employment, request or cause, directly or indirectly, any contracting party, supplier, vendor, investor, lender, municipality, government agency, quasi-governmental agency, or bond-issuing entity, or customer of the Company during the period of Employee's employment, to cancel or terminate any business relationship or dealings with the Company or any of its parents or affiliates.

(f) In addition, Employee shall not, directly or indirectly, during or for a period of one year after the termination of his employment, solicit, interfere with or entice, directly or indirectly, any employee (including any leased employee) of the Company, or any parent or affiliate, who worked for the Company (or its parent or affiliate) during the time that Employee worked for the Company (or its parent or affiliate), to leave the employment of the Company.

(g) If any portion of the restrictions set forth in this Section 9 should, for any reason whatsoever, be declared invalid by an arbitrator or court of competent jurisdiction, the validity or enforceability of the remainder of such restrictions shall not thereby be adversely affected. Employee acknowledges that the Company intends to expand its business into new geographic areas, that its sales and marketing prospects are for continued expansion into such areas, and that in his capacity as Senior Vice President of Property Management, he will have access to information and operations concerning such, and that therefore, the territorial, time and scope of activity limitations set forth in this Section 9 are reasonable and do not impose a greater restraint than is necessary for the adequate protection of the goodwill and other business interests of the Company. In the event any such limitation is deemed to be unreasonable by an arbitrator or court of competent jurisdiction, Employee and the Company agree that the arbitrator or court may reform the territorial, time and/or scope limitations of this Section 9.

(h) The existence of any claim or cause of action by Employee against the



Company shall not constitute a defense to the enforcement by the Company of the foregoing restrictive covenants.

**10. Alternative Dispute Resolution; Right to Injunction; Remedies.**

(a) Employee and the Company agree that in the event of any dispute or claim arising from or relating to this Agreement or the breach thereof, or to any other aspect of Employee's terms, conditions and/or benefits of employment or to any other aspect of his contacts with Company, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 30 days, then, upon written notice by either party to the other, such dispute or claim shall be submitted within the next 60 days to a one-half day mediation, with the mediation fee to be shared equally by the Employee and the Company, and with the mediator to be agreed upon by the Employer and the Company; provided, however, that if a mediator cannot be agreed upon, then one shall be appointed by the American Arbitration Association ("AAA") with all AAA and mediator fees to be shared equally by the Employee and the Company. If mediation is unsuccessful, then upon written notice by either party to the other and to AAA, within 30 days of the mediation, such dispute or claim shall be submitted for binding arbitration administered by AAA in accordance with the provisions of its Employment Dispute Arbitration Rules, except as provided in (b) below. Neither the Company nor the Employee may file any claim, complaint, charge or suit with any court or governmental agency against the other, or accept any damages or other relief as the result of any claim, complaint, charge or suit, except as provided in (b) below or as such restriction would otherwise be unlawful. All fees and costs up to \$2000.00 charged by AAA and the arbitrator(s) shall be paid equally by the Employee and the Company; all fees and costs charged by AAA and the arbitrator(s) in excess thereof shall be paid by the Company. Each party shall bear its own attorneys' fees and costs of arbitration except as otherwise ordered by the arbitrator(s).

(b) The Employee recognizes that the services to be rendered by him under this Agreement integrally involve the training and Confidential Information provided by the Company, the loss of which cannot be adequately compensated for in damages. In the event of a breach of Section 9 or 10 of this Agreement by the Employee, the Company shall be entitled to seek temporary injunctive relief from a court of proper jurisdiction pending the final decision and judgment in the arbitration as to such alleged breach. The Company shall not seek an award of attorneys' fees or costs incurred in bringing an action pursuant to this provision (b).

**11. Assignment.**

The rights and obligations of the Company under this Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Company.

**12. Amendment or Alteration.**

No amendment or alteration of the terms of this Agreement shall be valid unless made in writing and signed by both of the parties to this Agreement.

**13. Governing Law.**

This Agreement shall be governed by the laws of the State of Texas applicable to agreements made and to be performed therein. Any mediation, lawsuit or other proceeding in connection with this Agreement or Employee's employment or relationship with the Company shall occur or be brought in Dallas County, Texas.

**14. Severability.**

The holding of any provision of this Agreement to be invalid or unenforceable by a court of competent jurisdiction shall not affect any other provision of this Agreement, which shall remain in full force and effect.

**15. Notices.**

Any notices required or permitted to be given under this Agreement shall be sufficient if in writing, and if delivered by hand, or sent by certified mail, return receipt requested, to the addresses set forth below or such other address as either party may from time to time designate in writing to the other, and shall be deemed given as of the date of the delivery or mailing.

**16. Waiver or Breach.**

It is agreed that a waiver by either party of a breach of any provision of this Agreement shall not operate, or be construed, as a waiver of any subsequent breach by that same party.

**17. Entire Agreement and Binding Effect.**

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and shall be binding upon and inure to the benefit of the parties to this Agreement and their respective legal representatives, heirs, distributors, successors and assigns. Notwithstanding the foregoing, no prior agreements between the Employee and the Company relating to the confidentiality of information, trade secrets and patents shall be affected by this Agreement.

**18. Survival.**

Neither the termination of the Employee's employment nor the change in his job title or position shall affect the enforceability of Sections 9, 10 and 11 of this Agreement.

**19. Further Assurances.**

EMPLOYMENT AGREEMENT - page 6

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The parties agree to execute and deliver all such further documents, agreements and instruments and take such other and further action as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

**20. Headings.**

The section headings appearing in this Agreement are for the purposes of easy reference and shall not be considered a part of this Agreement or in any way modify, demand or affect its provisions.

**21. Counterparts.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

Feb 26 04 09:48a Vi 1 Carpenter

702-3 9616

P. 2  
P. 2

FEB 26 2004 8:24AM HP LASERJET 3200

IN WITNESS WHEREOF, the parties have executed this Agreement as of  
the date first above written.

SOUTHWEST HOUSING MANAGEMENT COMPANY,  
INC.

By: 

Name: Brian Potashnik

Title: President

5910 North Central Expressway, Suite 1145

Dallas, Texas 75206

214/891-1402 phone

214/987-3477 fax

  
Jeffrey W. Carpenter

EMPLOYMENT AGREEMENT - page 3

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Appendix 1466



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SOUTHWEST HOUSING MANAGEMENT COMPANY,  
INC.

By: \_\_\_\_\_

Name: Brian Potashnik

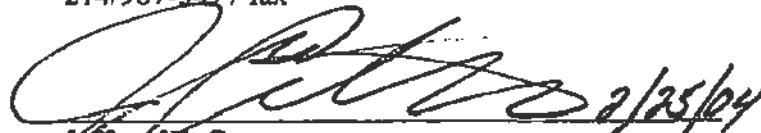
Title: President

5910 North Central Expressway, Suite 1145

Dallas, Texas 75206

214/891-1402 phone

214/987-3477 fax

 2/25/24  
Jeffrey W. Carpenter

# M F E

EXECUTIVE

**Nice Work:**

Offices

Go Residential

page 68

**Plus:**

When and Where to

Go Wireless

How to Respond to an

On-Site Crisis

# TEXAS TWO-STEP

Southwest Housing Takes the  
Lead on Affordable Development page 56

Brian Potashnik  
President  
Southwest Housing



# Change AGENTS

Southwest Housing  
transforms neighborhoods  
and people's lives.

Drive down the streets of southern Dallas' Cedar Crest neighborhood, and you'll see dismal barrack-style apartments, boarded-up storefronts, and buildings caked in a rainbow of graffiti, with store signs that are missing a letter or two. Continue just a little further, and you won't believe your eyes. There, in the middle of the grime and neglect, sits an urban oasis: Rosemont at Cedar Crest.

Once the site of a dilapidated shopping center, Southwest Housing's Cedar Crest property boasts a fashionable façade of red brick and Austin stone. Each apartment features a tiled entryway, 9-foot ceilings, ceiling fans, a kitchen island, and solid wood pantries. French doors open onto a large, inviting patio. To complete the package, residents at the 256-unit, family-targeted community are

offered a range of services from after-school programs and family counseling to adult education and recreational activities.

"It's very rewarding to take people out of the worst housing projects in the city and into brand-new living conditions which they can not only be proud of, but grow as people," says Brian Potashnik, president of Southwest Housing, a Dallas-based affordable housing company.

Rosemont at Cedar Crest is just a small piece of the legacy Potashnik and his wife Cheryl, co-owner of the company, are leaving to the community. One of the largest affordable housing developers in the Southwest, the company has built 8,000 units of much-needed affordable senior and family housing throughout Texas, often replacing rundown apartments and shopping centers. Since 2000, Southwest has invested more than \$150 million in

By Rachel Z. Azoff

Kelly LaDuke



Pier 70  
2801 Alaskan Way, Suite 200  
Seattle, Washington 98121  
Phone 206-215-9700, Fax 206-802-0040

**Confidential Draft**



October 16, 2006

Shariar Mohajer  
Director  
RBC Capital Markets  
One Liberty Plaza, 6<sup>th</sup> Floor  
New York, NY 10006

**Re: Letter of Intent to Purchase the General Partner's Interest**

Dear Shar:

Following are the general terms upon which Seller is willing to sell and Buyer is willing to purchase certain assets of Seller in connection with the Partnerships and projects listed on Schedule A (the "Projects"):

1. Seller. Collectively, all Southwest Housing entities or persons affiliated therewith.
2. Buyer. Cascade Affordable Housing LLC, a Washington limited liability company, or an affiliate thereof. Buyer and each entity it forms to purchase any of the assets to be sold must be jointly and severally liable for all representations, warranties, covenants and indemnification obligations under the Purchase Agreement. Buyer must include a creditworthy entity sufficient to satisfy financial requirements of lenders, limited partners and others whose consent is required for the transaction ("Consent Parties").
3. Assets to be Sold. Any and all rights, benefits and interests in or derived from each Partnership or Project by Seller, directly or indirectly, including without limitation, general partnership interests, Class B limited partner interests, loan receivables, incentive management fees, distributions, capital proceeds, development fees, guaranty fees, asset management fees, property management fees and disposition fees and the agreements associated therewith (altogether, the "Assets"). The Assets shall include, in any event, 100% of the general partnership interest in each Partnership, except in those Partnerships where Southwest is not affiliated with the general partner.
4. Obligations. Buyer will assume, if required by lenders or limited partners, all obligations relating to the Assets. Seller and Buyer will use their best efforts to cause the

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Seller to be released by third parties from any guarantees and obligations relating to the Assets. The obligations between Seller and Buyer will be governed by a Purchase Agreement consistent with the terms hereof.

5. Timeline. It is anticipated that following execution and delivery hereof, subject to the terms hereof:

(a) Seller shall begin diligent efforts to make available to Buyer, the information set forth on Schedule B for each Project and shall make best efforts to provide all such information for each Project within 30 days of execution of this Letter of Intent;

(b) the Seller and Buyer will work together and will have 30 days from the date hereof to obtain the conditional or preliminary written consent to the transaction of the limited partners in each Partnership and any non-profits in the Partnerships ("Partner Consents") and at the end of such 30 day period Seller and Buyer each have the right to terminate this transaction if such consents have not been obtained. In those situations where the lender and the limited partners are affiliated, Seller and Buyer shall also request assurances that if the limited partners consent then the lender will also consent;

(c) Seller and Buyer will have 60 days from the date hereof to negotiate and enter into a definitive Purchase Agreement;

(d) upon execution and delivery of a Purchase Agreement and receipt by Buyer of all information set forth in Schedule B for each project and Partner Consents, the Buyer will within 15 days make application to all lenders and regulatory agencies for their consent to the transaction (to expedite these consents applications, Buyer will prepare them prior to the execution of the Purchase Agreement); and

(e) 30 days after the Due Diligence Period, the transaction will close, subject to the procurement of all applicable consents. If all applicable consents have not been obtained by such time then either party (as long as such party is not in default) shall have the right to extend the closing date by an additional 30 days. If all applicable consents have not been obtained by the end of such extension period and if consents for the transfer of assets totaling at least 90% of the value of the Assets to be sold have been obtained, then a closing (the "Initial Closing") will occur with respect to those Assets and the sale of the remaining Assets to be sold will occur promptly upon obtaining the applicable consents. The Purchase Agreement shall contain provisions relating to the Buyer's contractual assumption of the duties and obligations relating to the Assets awaiting consent.



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6. Purchase Price.

(a) Thirty-Six Million and No/100 Dollars (\$36,000,000.00) paid in immediately available funds, at closing. In addition, One Million and No/100 Dollars (\$1,000,000.00) shall be paid at closing to Seller to reimburse Seller for all costs it incurs (regardless of whether Seller actually incurs more or less than \$1,000,000.00) to secure the Partner Consents ("Partner Consent Compensation").

(b) The Purchase Price will be increased by the amount of distributable cash flow (as defined and calculated pursuant to the controlling limited partnership agreement for each Partnership) due to Seller as of the end of the quarter prior to closing in the event such distributions have not been made as of the closing date. The purchase price will be increased by the amount of cash flow estimated as due to Seller as of the end of the quarter in which closing occurs in the event closing occurs after the 45th day of the quarter.

(c) Seller and Buyer agree that Seller shall be entitled to receive all cash developer fees to be paid on the deals identified on Schedule C which are anticipated to receive such cash developer fees prior to April 1, 2007, regardless of when actually paid. To the extent any such cash developer fees have not been paid prior to closing, the Seller shall be entitled to certain controls necessary to achieve the benchmarks necessary to cause those fees to be paid. Further, Seller and Buyer agree that Buyer shall be entitled to receive all cash developer fees to be paid on the deals identified on Schedule C which are anticipated to receive such cash developer fees after April 1, 2007, regardless of when actually paid. To the extent any such fees are paid prior to closing, the purchase price with respect to the applicable Assets shall be reduced dollar for dollar.

(d) Within 30 days of the date hereof, Buyer and Seller will use best efforts to agree on the allocation of the Purchase Price among the Assets.

7. Deposits. Upon execution of the Purchase Agreement, Buyer will deposit with an independent escrow agent 1% of the total purchase price as the initial deposit and at the end of the due diligence period an additional 1% of the total purchase price as an additional deposit. The deposit will be refundable to Buyer upon termination of the Purchase Agreement by the Buyer (only if Buyer is not in default under the Purchase Agreement) at any time during the due diligence period and after the expiration of the due diligence period only if Seller and Buyer are unable to obtain the consents from all Consent Parties necessary for an Initial Closing or if the Seller is in default or conditions to closing are unsatisfied due to Seller's performance under the Purchase Agreement.

At closing, all of the deposits will be credited against the Purchase Price.

8. Closing. Closing will occur at the offices of the Seller or at such other place as the parties may agree, at the time(s) specified in Paragraph 5(e) hereof.

9. Due Diligence. Buyer will have a 90 day period after the execution of the Purchase Agreement and receipt of all information in Schedule B that has not been

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received (as identified in the Purchase Agreement) to conduct due diligence. Buyer will be permitted access to all material documentation in possession of the Seller relating to the Assets pursuant to a public link to Seller's website. Seller will be permitted to ask questions of applicable lenders, limited partners and housing authorities, provided Buyer has given Seller reasonable prior written notice thereof prior to initial contact and has given Seller an opportunity to participate in such discussions. Buyer will be entitled to access the Projects to perform noninvasive property inspections, and Seller will be entitled to reasonable prior written notice of Buyer's onsite inspection of any properties and will be entitled to accompany Buyer in such inspection. Buyer will indemnify Seller for any damages caused by Buyer's inspection.

10. Representations and Warranties. Seller will make absolute representations and warranties as to formation, organization, power, authority, execution, delivery and enforceability, title to the Assets, pending litigation, and complete disclosure of documentation in the possession of Seller relating to the Assets. All other representations and warranties will be made based on the actual knowledge of the Seller. Actual knowledge will include current recollection of Seller and any written notices to Seller from limited partners, lenders, housing authorities and governmental agencies contrary to the representation or warranty.

11. Indemnification. Prior to closing, Seller's sole remedy shall be retention of the deposit as described herein and Buyer's sole remedy will be the refund of the deposit. After closing, Buyer will indemnify Seller for any losses incurred by Seller relating to occurrences after closing and for any breach of representation, warranty or covenant by Buyer under the Purchase Agreement which survives closing. Similarly, Seller will indemnify Buyer for any losses incurred by Buyer relating to: (a) claims made by third parties under project documents for defaults existing as of closing, but not disclosed by Buyer prior to closing, (b) breaches by Seller of representations, warranties and covenants, which survive closing (c) any employment related issues occurring prior to closing, (d) third party claims relating to events occurring prior to closing and not covered by insurance or (e) compliance issues occurring prior to closing. Seller and Buyer will use their best efforts to obtain estoppel agreements from all consent providers. Seller and Buyer will each identify a creditworthy entity to support their indemnification obligations hereunder.

12. Certain Limitations. Any representations and warranties by Seller regarding the physical condition of the Projects will not survive closing, and no claim may be made with respect to the physical condition of the properties after closing. All other representations and warranties made by either party will survive closing for a period of two years, during which time a claim under such representation and warranty must be made or otherwise forfeited. The parties will have no obligations to the other for indirect or speculative damages or lost profits or for losses which are not incurred by the indemnified party in favor of third parties. Seller shall not be responsible for damages until damage amounts are in excess of \$150,000 and Seller shall not be responsible for damages in excess of \$3,400,000.



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13. Kickout Rights. Seller will have the right to remove certain projects from this transaction for the purpose of curing the failure to meet a closing condition, any default by Seller and any event or fact pursuant to which Buyer desires to terminate the transaction. Notwithstanding the foregoing, other than the Napico deals, Seller shall not kickout Assets representing total value in excess of 10% of the purchase price.

14. Conduct of Business. Sellers will agree to conduct business in the ordinary course consistent with past practices and to give Buyer notice of any matter which Seller becomes aware of that is or may result in a breach of a representation, warranty or covenant of Seller in the Purchase Agreement. Further, Seller will agree to complete construction in accordance with all Project documentation. Buyer will agree to conduct business in accordance with all project documents and will agree to notify Sellers of any matter which may cause Seller any liability, regardless of any releases to the contrary.

15. Employees. Within 30 days of the date hereof, Seller and Buyer shall agree on the treatment of all affected employees. Seller shall supply Buyer with a list of compensation and benefits for all such employees. It is anticipated that Buyer will retain all executive, accounting and management employees.

16. Tax Credits. Seller will indemnify Buyer for all tax credit recapture due to compliance issues occurring prior to closing. Seller shall be responsible for all tax credit adjusters associated with eligible basis and arising out of a cost certification, but only to the extent the adjuster is caused by the actual amount of credits being lower than the amount Seller has projected on Schedule D (on Projects that have not finished construction/cost certification by Closing), which Schedule D shall be completed within 30 days of the date hereof. Buyer shall take all other basis risk including the risk of adjustment on IRS audit.

17. Required Consents. Buyer and Seller will, together, determine all required consents from Consent Parties and will cooperate to obtain all such consents. It is anticipated that the consent of all lenders, partners and housing authorities will be required.

18. Tax Matters. Seller and Buyer will use a "closing of the books" method with respect to allocations of income and expense. Seller and Buyer will cooperate with respect to the filing of any tax returns relating to the period prior to and immediately after closing. Seller shall have the right to give prior written consent to any tax return relating to the tax period prior to closing. Sellers anticipate receiving capital gain treatment in connection with the sale of general partner and Class B limited partner interests (and all rights, fees and distributions associated therewith or otherwise payable to the general partners or Class B limited partner) and ordinary income in connection with the sale of all other Assets.

19. Expenses. Each party shall pay its own legal counsel and accounting expenses in connection with this Letter of Intent, the Purchase Agreement and seeking consents. Seller and Buyer will split on a 50/50 basis all transaction costs (except for the costs incurred to secure Partner Consents), including but not limited to (a) any assumption fees



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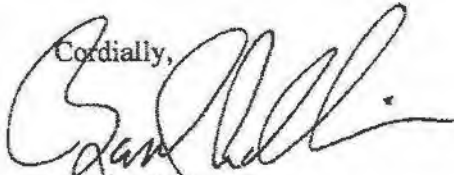
or transfer fees required by lenders or housing agencies and (b) escrow and recording fees and transfer taxes (if applicable) for the closing. Transaction costs shall not include (x) the costs associated with securing Partner Consents and (y) sales commissions, which shall be paid by Seller to Seller's Broker if applicable. Seller and Buyer represent and warrant to each other that (except for RBC Capital Markets ("Seller's Broker")) there have been no brokers or salespeople involved in this transaction and to the extent there are, each party who engaged same shall hold the other party free and harmless from any demand for a fee. The costs associated with securing Partner Consents shall be the sole responsibility of Seller for which Seller shall receive the Partner Consent Compensation set forth in Section 6 hereof; however, such costs shall not include changes in the economic structure of a deal required by any partner (e.g. reserve requirements). Buyer shall pay for the cost of any title insurance if Buyer chooses to obtain such insurance; provided that if Buyer chooses not to obtain title insurance, then Seller shall deliver to Buyer the most recent title policy for each project and make a representation and warranty that, except as disclosed, Seller has not placed anything of record since the date of the title policy.


20. Exclusivity. The sixty (60) day period following the execution and delivery of this letter by both parties is referred to herein as the "Exclusive Period." For good and valuable consideration, the receipt and sufficiency of which are acknowledged, throughout the Exclusive Period (unless this letter is terminated by Buyer for any reason or by Seller under paragraph 5 hereof), Seller agrees not to directly or indirectly (i) solicit or initiate, or encourage submission of inquiries, proposals or offers from any potential buyer relating to the disposition of the Assets, or (ii) participate in any discussions or negotiations with any potential third party purchaser or furnish any such third party with any information with respect to the disposition of the Assets. The foregoing shall not include negotiations with housing authorities on the following deals: Primrose Houston 7 Housing, LP; TX Aldine Bender Housing, LP; TX Garth Housing LP; Heatherwilde Villas Housing, LP; TX Old Manor Housing, LP; Primrose SA IV Housing, LP.

21. Disclosure. Each party agrees that it will not issue any press release or other public disclosure of this letter or of the transaction contemplated hereby without the prior written approval of the other, unless, in the good faith opinion of counsel, such disclosure is required by law. Seller and Buyer will maintain the terms of this letter, as well as all negotiations concerning the transaction in strict confidence; provided, that (i) each party may disclose such information to its controlling persons, persons under common control with such party, affiliates and each of their respective employees, potential partners and investors, advisors and financing sources to the extent reasonably necessary (provided that such persons are directed to hold such information in confidence in accordance with this letter) and (ii) both parties may make disclosure to the extent required by law, regulation or legal process.

22. Nonbinding. This letter of intent shall be nonbinding, except for the provisions of paragraphs 20 and 21.

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Cordially,  
  
Basil P. Rallis, Director

Accepted 

Cheryl Potashnik

Date 10/16/06

Brian Potashnik

Cheryl Potashnik

**PURCHASE AND SALE AGREEMENT**

**By and Among**

**CASCADE AFFORDABLE HOUSING LLC**

**and**

**SELLERS (as listed on Schedule A)**

**Dated April 30, 2007**

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## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement"), dated as of April 26, 2007, is made by and among Cascade Affordable Housing LLC, a Washington limited liability company (the "Purchaser"), and the Sellers listed on Schedule A attached hereto (individually and/or collectively as the context may require, the "Seller"). Unless otherwise indicated, all capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in Exhibit A attached hereto and made a part hereof.

## RECITALS

- A. Seller is engaged in the business (the "Business") of sponsoring, developing and managing each of the multi-family residential projects identified by project name and address on Schedule A (the "Projects").
- B. Each Project is owned and operated by a limited partnership as set forth on Schedule A (collectively, the "Project Partnerships"), and Seller, pursuant to certain limited partnership agreements for certain Project Partnerships (together with partnership agreements from all other Project Partnerships, the "Project Partnership Agreements") owns partnership interests in certain Project Partnerships as set forth on Schedule A (collectively, the "Partnership Interests").
- C. In consideration for its services in connection with the Projects, Seller receives or is entitled to receive various payments, including, but not limited to, cash distributions, property management fees, incentive management fees, asset management fees, tax credit fees, principal amortization payments, disposition fees, sale and refinancing proceeds, repayment of operating deficit loans and deferred development fees (collectively, with all contractual rights associated therewith, the "Economic Interests," and together with the Partnership Interests, other than any interests excluded from the transaction contemplated hereby pursuant to the terms of this Agreement, the "Purchased Assets"). The Seller of each Economic Interest (which Economic Interest is separate from a Partnership Interest) and a description of such Economic Interest is also set forth on Schedule A.
- D. Seller has issued various guarantees and/or indemnities and has other obligations in connection with the Projects and the Purchased Assets, including, without limitation, guarantees relating to operating deficits, repurchase events, tax credit compliance and recapture, permanent loan closing, loan obligations, general partner obligations, developer obligations, environmental indemnities and other contractual obligations (altogether, the "Seller Obligations").
- E. Substantially all of the items listed on Exhibit B attached hereto, to the extent within Seller's possession or control, are or will be available within thirty (30) days of the date hereof on the Southwest Website (the "Web Docs"). The items listed on Exhibit C attached hereto (the "Office Docs") will be available for review at the offices of Seller or at the Project locations during the time period beginning on the date hereof and ending at the termination or expiration of this Agreement. Altogether, the Web Docs, the Office Docs, the Title Docs (defined below) and such other information as Seller shall disclose

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed and delivered as of the date first above written.

BUYER:

CASCADE AFFORDABLE HOUSING LLC, a  
Washington limited liability company


By:

  
Name: Brian Haggel  
Its: Manager

BUYER'S INDEMNITOR:

CASCADE HOLDINGS LLC, a Washington  
limited liability company

By:

  
Name: Brian Haggel  
Its: Manager

SELLER:

FOR EACH OF THE SELLERS LISTED ON  
SCHEDULE A HEREOF

By:

  
Brian Potashnik, authorized agent

SELLER'S INDEMNITOR:

SOUTHWEST GUARANTOR LLC

By:

  
Brian Potashnik, sole member



**SCHEDULE A**

**Southwest Cascade  
Seller/Asset/Purchase Price Allocation<sup>1 2 3</sup>**



<sup>1</sup> With respect to any partnership interest, unless footnoted otherwise, it will be a direct transfer of the partnership interest and will include any and all interests in the applicable partnership and all rights associated herewith or arising therefrom, including, without limitation, any and all rights relating to ownership, control, management, consent, allocations, credit, distributions and fees.

With respect to Developer Fees, unless otherwise footnoted, this will include assignment of all of Seller's rights under the Development Agreement.

<sup>2</sup> Generally, Seller and Buyer agreed that the tax treatment will be capital gain for the sale of GP interests and Class B interests and ordinary income for developer fees and management rights. However, a portion (i.e., that portion attributable to depreciation taken) of the amounts paid for partnership interests will be taxed at 25%. Please check with the accountants.

<sup>3</sup> We still need to identify which assets will be excluded. For example, will we exclude unpaid contractor fees, development deficit loans, operating deficit loans, rights to disbursements from certain reserves?

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
1.	MHMR Senior Housing, L.P.	a. MHMR Senior Housing Development Corporation	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Corporation <sup>2</sup>	c. Loan Receivable <sup>3</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>4</sup> and Loan Receivable <sup>3 5</sup>	[\$ ]

<sup>1</sup> Intentionally left blank.

<sup>2</sup> This is a typo. This entity does not exist.

<sup>3</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>4</sup> Includes deferred management fee.

<sup>5</sup> Includes receivable from Partnership for items that should have been paid by Partnership.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
2.	Greenville Senior Housing, L.P.	a. Greenville Senior Housing Development Corporation	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>2</sup>	[\$ ]

<sup>1</sup> Cheryl Potashnik HUB.

<sup>2</sup> Includes deferred management fee. Subject to A/P to Partnership for overpayment of management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
3.	Texas Hampton Senior Housing, L.P.	a. Texas Hampton Senior Housing Development Corporation	a. General Partner Interest	[\$ ]
		b. Brian Potashnik	b. Class B Limited Partner Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Loan Receivable <sup>1</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>2</sup> and Loan Receivable <sup>1 3</sup>	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>2</sup> Includes deferred management fee.

<sup>3</sup> Includes receivable from Partnership for items that should have been paid by Partnership.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
4.	The Parks at Westmoreland Senior Housing, L.P.	a. The Parks at Westmoreland Senior Housing Development Corporation	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>2</sup> and Loan Receivable <sup>3</sup>	[\$ ]

<sup>1</sup> There is an assignment of future cash flow to a church.

<sup>2</sup> Includes deferred management fee.

<sup>3</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
5.	Hillsboro Housing, L.P. <sup>1</sup>	a. Southwest Housing Development Company, Inc.	a. Development Fee	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights	[\$ ]

<sup>1</sup> HUB deal. Villas Buenas, Inc. is owner of GP. Possible buyout by Cheryl.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
6.	Chattanooga Housing, L.P. <sup>1</sup>	a. Southwest Housing Development Company, Inc.	a. Development Fee	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights <sup>2</sup> and Loan Receivable <sup>3</sup>	[\$ ]

<sup>1</sup> HUB deal. El Dorado Housing Development Corp. is owner of GP. Cheryl has contract to purchase.

<sup>2</sup> Includes deferred management fee.

<sup>3</sup> Includes receivable from Partnership for items that should have been paid by Partnership.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
7.	Knollwood Villas, L.P.	a. Knollwood Villas Development Corporation	a. General Partner Interest	[\$ ]
		b. Brian Potashnik	b. Class B Limited Partner Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Loan Receivable <sup>1</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>2</sup> and Loan Receivable <sup>3</sup>	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>2</sup> Includes deferred management fee. Subject to A/P to Partnership for overpayment of management fee.

<sup>3</sup> Includes receivable from Partnership for items that should have been paid by Partnership.



	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
8.	TX Bluffview Housing, L.P.	a. TX Bluffview Housing Development Corporation	a. General Partner Interest	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Loan Receivable <sup>1</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
9.	Arbors Housing Partners, Ltd. <sup>1 5</sup>	a. Arbors Creekside LLC	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee and Loan Receivables <sup>2</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights <sup>3</sup> and Loan Receivable <sup>2 4</sup>	[\$ ]

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<sup>1</sup> Intentionally left blank.

<sup>2</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>3</sup> Includes deferred management fee.

<sup>4</sup> Includes receivable from Partnership for items that should have been paid by Partnership.

<sup>5</sup> There is also an amount due to construction company, which is excluded from this transaction.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
10.	TX Hillside Apartments, L.P. <sup>4</sup>	a. TX Hillside Development Corporation	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Loan Receivable <sup>2</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>3</sup> and Loan Receivable	[\$ ]

<sup>1</sup> Subject to a donation of cash flow to a church.

<sup>2</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>3</sup> Includes deferred management fee.

<sup>4</sup> There is a small tract of land which is part of the Project which may need to be transferred.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
11.	Colorado Creekside Housing, L.P. <sup>3</sup>	a. Colorado Creekside Housing Development, Inc.	a. General Partner Interest	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Loan Receivable <sup>1</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>2</sup>	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>2</sup> Includes receivable from Partnership for items that should have been paid by Partnership.

<sup>3</sup> There is an amount due to the construction company which is excluded from this transaction.

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
12.	Highland Gardens, L.P. <sup>2</sup>	a. Southwest Housing Development Company, Inc.	a. Development Fee	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights <sup>1</sup>	[\$ ]

<sup>1</sup> Includes deferred management fee.

<sup>2</sup> HUB deal. Casa Linda Development Corp. is owner of GP. Possible buyout by Cheryl.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
13.	Tahoe Housing, L.P. <sup>1</sup>	a. Southwest Housing Development Company, Inc.	a. Development Fee	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights	[\$ ]

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<sup>1</sup> HUB deal. El Dorado Housing Development Corp. is owner of GP. Cheryl has contract to purchase.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
14.	Oak Hollow Housing, L.P.	a. Oak Hollow Housing Development Corporation	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Voluntary Loan <sup>2</sup> and Loan Receivable <sup>3</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>4</sup>	[\$ ]

<sup>1</sup> Research needs to be done as to whether Related will continue to require the GP to be "disaffiliated." If so, we need to discuss how this will occur.

<sup>2</sup> See Charter Workout docs.

<sup>3</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>4</sup> Includes deferred management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
15.	Pleasant Valley Villas Housing, L.P. <sup>4</sup>	a. Pleasant Valley Villas Development, L.L.C.	a. General Partner Interest	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Voluntary Loan <sup>1</sup> and Loan Receivable <sup>2</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>3</sup>	[\$ ]

<sup>1</sup> See Charter Workout docs.

<sup>2</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>3</sup> Includes deferred management fee.

<sup>4</sup> This is a fee due to contractor, which is excluded from this transaction.



	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
16.	Clarkridge Villas Housing, L.P.	a. Clarkridge Villas Development, L.L.C.	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee <sup>2</sup> and Voluntary Loan <sup>3</sup> and Loan Receivable <sup>4</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>5</sup>	[\$ ]

<sup>1</sup> Research needs to be done as to whether Related will continue to require the GP to be "disaffiliated." If so, we need to discuss how this will occur.

<sup>2</sup> Cash developer fee stays with Southwest.

<sup>3</sup> See Charter Workout docs.

<sup>4</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>5</sup> Includes deferred management fee.

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
17.	Heatherwilde Villas Housing, L.P.	a. Heatherwilde Villas Development, L.L.C.	a. General Partner Interest	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee <sup>1</sup> and Voluntary Loan <sup>2</sup> and Loan Receivable <sup>3</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>4</sup>	[\$ ]

<sup>1</sup> Cash developer fee stays with Southwest.

<sup>2</sup> See Charter Workout docs. Also, when \$1.5 million collateral account is used to resize debt, then that amount will become a voluntary loan.

<sup>3</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>4</sup> Includes deferred management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
18.	Primrose SA II Housing, L.P.	a. Brian Potashnik	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee and Loan Receivables <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights <sup>2</sup>	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>2</sup> Includes deferred management fee.

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
19.	Southern Oaks Housing, L.P.	a. Southern Oaks Housing Development, L.L.C.	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee <sup>2</sup> and Voluntary Loan <sup>3</sup> and Loan Receivable <sup>4</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>5</sup>	[\$ ]

<sup>1</sup> Research needs to be done as to whether Related will continue to require the GP to be "disaffiliated." If so, we need to discuss how this will occur.

<sup>2</sup> Cash developer fee stays with Southwest.

<sup>3</sup> See Charter Workout docs.

<sup>4</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>5</sup> Includes deferred management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
20.	Hickory Trace Housing, L.P.	a. Hickory Trace Development, L.L.C.	a. General Partner Interest	[\$ ]
		b. Brian Potashnik	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee and Voluntary Loan <sup>1</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>2</sup>	[\$ ]

<sup>1</sup> See Charter Mac Workout docs.

<sup>2</sup> Includes deferred management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
21.	Escondido Housing, L.P.	a. Escondido Housing Development, L.L.C.	a. General Partner Interest	[\$ ]
		b. Brian Potashnik.	b. Class B Limited Interest	[\$ ]
		c. Southwest Housing Development Company, Inc.	c. Development Fee <sup>1</sup> and Loan Receivable <sup>2</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights <sup>3</sup>	[\$ ]

<sup>1</sup> Cash developer fee stays with Southwest. 25% of entire Developer Fee is paid to HSI. See Letter Agreement.

<sup>2</sup> May be paid off with final capital contribution.

<sup>3</sup> Includes deferred management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
22.	Texas Birchwood Apartments, L.P. <sup>1</sup>	a. Texas Birchwood Properties Corporation	a. General Partner Interest	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights	[\$ ]

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<sup>1</sup> Napico deal (in dispute).

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
23.	Texas-Estrada Apartments, L.P. <sup>1 5</sup>	a. Southwest Housing Investment, Inc.	a. General Partner Interest <sup>2</sup>	[\$ ]
		b Southwest Housing Management Corporation	b Property Management Rights <sup>3 4</sup>	[\$ ]

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<sup>1</sup> Napico deal (in dispute).

<sup>2</sup> Need to research whether we need HSI's consent to transfer as HSI is 49% owner in Southwest Housing Investment, Inc. Need Southwest Housing Investment, Inc. governing documents. Does HSI have dissenter or appraisal rights?

<sup>3</sup> Includes deferred management fee.

<sup>4</sup> Subject to A/P to Partnership for overpayment of management fees.

<sup>5</sup> There is a balance due to the contractor which is excluded from this transaction.



	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
24.	Texas Brook Apartments L.P. <sup>1</sup>	a. Texas Brook Properties Corporation	a. General Partner Interest	[\$ ]
		b. Texas Brook Properties Corporation/Brian Potashnik	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights <sup>2,3</sup>	[\$ ]

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<sup>1</sup> Napico deal (in dispute).

<sup>2</sup> Includes deferred management fee.

<sup>3</sup> Subject to A/P to Partnership for overpayment of management fees.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
25.	Texas Melody Apartments L.P. <sup>1</sup>	a. Texas Melody Properties Corporation	a. General Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc./Texas Melody Properties Corporation/ Brian Potashnik	b. Development Fee and Voluntary Loan	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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<sup>1</sup> Napico deal (in dispute).

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
26.	Texas Kimwood Properties Corporation <sup>1</sup>	a. Texas Kimwood Properties Corporation	a. General Partner Interest	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights	[\$ ]

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<sup>1</sup> Napico deal (in dispute).

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
27.	Arlington Senior Housing L.P. <sup>1</sup>	a. Arlington Senior Housing Development Corporation	a. General Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc./Arlington Senior Housing Development Corporation/Brian Potashnik	b. Development Fee and Loan Receivable <sup>2</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights <sup>3</sup>	[\$ ]

<sup>1</sup> Napico deal (in dispute).

<sup>2</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>3</sup> Includes deferred management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
28.	Heatherwilde Estates Housing, L.P. <sup>1</sup>	a. Southwest Housing Development Company, Inc.	a. Development Fee <sup>2,3</sup>	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights	[\$ ]

<sup>1</sup> Does Mr. Leopold have authority to consent (on behalf of the General Partner) to the change in the property manager.

<sup>2</sup> 16.28% of Development Fee is paid to Housing Authority of Bexar County after Developer (although Master Agreement says non-Southwest entity is developer, Partnership Agreement says Southwest Housing Development Company, Inc. is a subcontractor of the developer – need subcontractor agreement) receives the full development fee.

<sup>3</sup> Need to determine from docs if Southwest is entitled to any portion of the GP cash flow (not in Partnership Agreement, Master Agreement or Incentive Management Agreement).

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
29.	Pleasant Valley Courtyards Housing, L.P. <sup>1</sup>	a. Southwest Housing Development Company, Inc.	a. Development Fee <sup>2</sup> and Loan Receivable <sup>3</sup>	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights	[\$ ]

<sup>1</sup> HUB deal. Cheryl has contract to buyout.

<sup>2</sup> Need docs to determine Southwest's interest in GP and Developer fees. Likely similar to Heatherwilde.

<sup>3</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents. May be paid from perm loan proceeds which closed in third quarter, 2006.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
30.	Primrose Houston I Development, L.P.	a. Primrose Houston I Development, L.L.C.	a. General Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Deferred Development Fee and Loan Receivable <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
31.	Primrose Houston South Housing, L.P.	a. Primrose Houston South Development, L.L.C.	a. General Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee and Loan Receivable <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
32.	TX Hampton Villas, L.P.	a. Arlington Villas SLP, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> Master Agreement provides that Tarrant County Housing Partnership, Inc. receives 20% of the development fee as paid. The Master Agreement also provides that SHDC receives the General Partner's Asset Management Fee, 20% of the General Partner's interest in cash flow and 5% of the General Partner's interest in capital proceeds. Need final Master Agreement to verify.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
33.	Parmer Villas Housing, L.P.	a. Parmer Villas Development, L.L.C.	a. General Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee and Loan Receivable <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights <sup>2</sup>	[\$ ]
		d. Affordable Housing Construction, Inc.	d. Contractor's Profit	[\$ ]

<sup>1</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>2</sup> Includes deferred management fee.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
34.	Primrose SA IV Housing, L.P. <sup>4 5</sup>	a. Jefferson Plaza SLP, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>1</sup> and Loan Receivable <sup>2</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights <sup>3</sup>	[\$ ]

<sup>1</sup> Master Agreement provides that 20% of deferred developer fee is shared with Our Casas, as paid. Master Agreement also provides that SHDC receives the GP Asset Management Fee, 20% of the GP's interest in cash flow and 10% of the GP's interest in capital proceeds.

<sup>2</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

<sup>3</sup> Includes deferred management fee.

<sup>4</sup> Loan extension may require change in underwriting criteria.

<sup>5</sup> Potential admission of SAHA which would change cash flow splits.

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
35.	TX Acme A South Housing, L.P. <sup>3</sup>	a. TX Acme A South SLP, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>1</sup>	[\$ ]
		c. Southwest Housing Development Company, Inc./Brian Potashnik	c. Guaranty Fee <sup>2</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights	[\$ ]

<sup>1</sup> Subject to amounts to be shared with HSI.

<sup>2</sup> Pursuant to the Master Agreement, a \$500,000 guarantee fee is to be paid from cash flow and capital proceeds after the developer fee is paid.

<sup>3</sup> Unpaid Contractor fee is excluded.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
36.	TX Pleasanton Housing, L.P. <sup>3</sup>	a. TX Pleasanton Housing SLP, L.L.C.	a. Class B Limited Interest <sup>1</sup>	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>2</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> Master Agreement provides that Class B gets 50% of the GP's and Class B's collective interest in cash flow and 85% of the GP's and Class B's collective interest in capital proceeds.

<sup>2</sup> Pursuant to the Master Agreement, SAAH gets first \$100,000 of Developer Fee, then SHDC gets the next \$400,000 and then SAAH gets 20% and SHDC gets 80%.

<sup>3</sup> Potential replacement of SAAH with SAHA, which will change cash flow splits.

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
37.	TX Garth Housing, L.P.	a. TX Garth Development, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
38.	TX Crist Housing, L.P.	a. TX Crist Development SLP, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Primrose at Crist Development Company, LLC <sup>1</sup>	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> Since SW owns only 75% of Primrose at Crist Development Company LLC, then I suggest Southwest Housing Development Company, Inc. sell its 75% interest therein.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
39.	TX John West Housing, L.P.	a. TX John West Development SLP, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>1</sup>	[\$ ]
		c. Southwest Housing Development Company, Inc./Brian Potashnik	c. Guaranty Fee <sup>2</sup>	[\$ ]
		d. Southwest Housing Management Corporation	d. Property Management Rights	[\$ ]

<sup>1</sup> Master Agreement provides that HSI gets paid \$50,000 at closing, then SHDC gets next payments until SHDC has received \$283,333 and then HSI gets 15% and SHDC gets 85%.

<sup>2</sup> Pursuant to the Master Agreement, a \$500,000 guarantee fee is to be paid from cash flow and capital proceeds after the developer fee is paid.



	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
40.	Arbor Woods Housing, LP	a. Arbor Woods Housing Development, L.L.C.	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee and Loan Receivable <sup>2</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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<sup>1</sup> Cheryl Potashnik HUB deal.

<sup>2</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
41.	TX Pasadena Housing, L.P.	a. TX Pasadena Development, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
42.	TX Laureland Housing, L.P.	a. TX Laureland Development SLP, L.L.C.	a. Class B Limited Interest <sup>1</sup>	[\$ ]
		b. Laureland Development Company, LLC <sup>2</sup>	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> Class B gets 50% of the GP's and Class B's collective interest in cash flow and capital proceeds.

<sup>2</sup> Since Southwest Housing Development Company, Inc. owns 80% of Laureland Development Company, LLC, then I suggest Southwest Housing Development Company, Inc. sell its 80% member interest therein.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
43.	TX Scyene Housing, L.P.	a. TX Scyene Development SLP, L.L.C.	a. Class B Limited Interest <sup>1</sup>	[\$ ]
		b. Scyene Development Company, LLC <sup>2</sup>	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> Class B gets 50% of the GP's and Class B's collective interest in cash flow and capital proceeds.

<sup>2</sup> Since Southwest Housing Development Company, Inc. owns 80% of Laurelnd Development Company, LLC, then I suggest Southwest Housing Development Company, Inc. sell its 80% member interest therein.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
44.	Primrose Houston 7 Housing, L.P. <sup>2</sup>	a. Primrose Skyline Apartments SLP, L.L.C.	a. Class B Limited Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> Subject to amounts to be shared with SETH. Also, cash developer fee stays with Southwest. City of Houston HOME loan pending.

<sup>2</sup> Appraisal District has appealed tax exemption decision of lower court in favor of Partnership.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
45.	TX Tenison Housing, L.P.	a. TX Tenison Development, LLC	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. CLG Consulting, Inc.	b. Development Fee <sup>2</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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<sup>1</sup> Cheryl Potashnik HUB deal.

<sup>2</sup> Subject to amounts to be shared with HSI.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
46.	TX Palacio Housing, L.P. <sup>1 4</sup>	a. Southwest Housing Development Company, Inc.	a. Development Fee <sup>2</sup>	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights <sup>3</sup>	[\$ ]

<sup>1</sup> MAUC deal.

<sup>2</sup> Subject to amounts to be shared with MAUC owned co-developer. Also, cash developer fee stays with Southwest.

<sup>3</sup> To include rights to cash flow under the Partnership Agreement, Incentive Management Fee under the Incentive Management Agreement and the Partnership Management Fee under the Partnership Management Agreement.

<sup>4</sup> Reimbursement to Southwest under Reimbursement Agreement are excluded from this transaction.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
47.	New Braunfels 2 Housing, L.P. <sup>2</sup>	a. New Braunfels 2 SLP, L.L.C.	a. Class B Limited Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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<sup>1</sup> Subject to amounts to be shared with SAHFC.

<sup>2</sup> Potential for public housing units.



	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
48.	TX Aldine-Bender Housing, L.P. <sup>1</sup>	a. TX Aldine-Bender Development, L.L.C.	a. Class B Limited Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> Potential buyout of non profit GP.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
49.	TX Old Manor Housing, L.P.	a. TX Old Manor Housing SLP, L.L.C.	a. Class B Limited Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee <sup>1</sup>	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights <sup>1</sup>	[\$ ]
		d. Affordable Housing Construction, Inc.	d. Contractor Profit	[\$ ]

<sup>1</sup> Subject to amounts to be shared with HSI.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
50.	TX Bammel Housing, L.L.C.	a. TX Bammel Development, L.L.C.	a. Special Class B Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
51.	Clark 05 Housing, L.P. <sup>1</sup>	a. Clark 05 SLP, L.L.C.	a. Class B Limited Partner Interest	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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<sup>1</sup> Potential for public housing units.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
52.	Cedar Hill Senior Housing, L.P.	a. Cedar Hill Senior Housing Development, L.L.C.	a. General Partner Interest <sup>1</sup>	[\$ ]
		b. Southwest Housing Development Company, Inc.	b. Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

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<sup>1</sup> Cheryl Potashnik HUB.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
53.	TX Timbercreek Housing, L.P. <sup>1</sup>	a. Southwest Housing Development Company, Inc.	a. Deferred Development Fee	[\$ ]
		c. Southwest Housing Management Corporation	c. Property Management Rights	[\$ ]

<sup>1</sup> HUB deal. GP is owned by B&L Development, Inc. Potential buyout by Cheryl.

	Partnership Name	Seller	Purchased Assets	Purchase Price Allocation
54.	Laredo Vista, L.P. <sup>1</sup>	a. Southwest Housing Development Company, Inc.	a. Deferred Development Fee	[\$ ]
		b. Southwest Housing Management Corporation	b. Property Management Rights and Loan Receivable <sup>2</sup>	[\$ ]

<sup>1</sup> HUB deal. GP is owned by Villas Buenas, Inc. Potential buyout by Cheryl.

<sup>2</sup> May be reclassified in upcoming audit. Auditors will determine type of loan (e.g. voluntary, operating deficit, completion) which affects priority and who the lender should be (e.g. general partner). Need to make sure applicable Southwest lender has the right to receive repayment under the Partnership documents.

**CONSULTING AND ASSET MANAGEMENT SERVICES AGREEMENT  
(SW Portfolio)**

This Consulting and Asset Management Services Agreement (this "Agreement") is dated as of the 1<sup>st</sup> day of November, 2007, by and between Cascade Affordable Housing LLC, a Washington limited liability company ("Consultant"), and Southwest Housing Management Corporation, a TEXAS corporation ("SWM").

**RECITALS:**

- A. Consultant as Purchaser and the Sellers listed on Schedule A to the Original Agreement have entered into a Purchase and Sale Agreement dated April 30, 2007 (the "Original Agreement"), as amended by Amendment No. 1 dated June 1, 2007, a Reinstatement of and Amendment No. 2 dated June 29, 2007, Amendment No. 3 dated July 16, 2007, Amendment No. 4 dated September 17, 2007, and Amendment No. 5 dated October 26, 2007 (collectively, the "Purchase Agreement"). Capitalized terms not defined in this Agreement shall have the meanings set forth in the Purchase Agreement.
- B. SWM provides property management and related services to the Projects.
- C. SWM desires to retain Consultant to provide certain consulting and asset management services to SWM and the Projects. Consultant desires to be retained by SWM to provide such services. Consultant desires to provide such services, in part, to assist Consultant in familiarizing itself with the operations of SWM and the Projects, and to provide for a smooth transition of property management and related services in connection with the future Closing under the Purchase Agreement.

NOW, THEREFORE, in consideration of the covenants, terms and conditions set forth herein, SWM and Consultant agree as follows:

**SECTION 1. RETENTION OF CONSULTANT.** SWM hereby retains Consultant to perform the Consulting and Asset Management Services defined herein (the "Services"), on the terms and conditions and in consideration of the payments and performance of the obligations set forth herein. In performing the Services, Consultant will be acting on its own behalf and not as a partner or venturer of SWM. Consultant agrees to further the interests of SWM by furnishing Consultant's skill, judgment and experience performing the Services. Consultant agrees to perform the Services in an expeditious manner consistent with the terms of the Purchase Agreement and this Agreement.

**SECTION 2. CONSULTANT'S RESPONSIBILITIES.** Consultant shall provide the following services and perform the following oversight and supervision functions in connection with SWM and each Project:

- (a) Consultant shall provide consulting and related services with respect to the day-to-day operation of SWM and the provision by SWM of property management and related services to the Projects. Such Services shall include communications

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**CONFIDENTIAL  
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Appendix 1538**



with senior and project level management personnel regarding Project operations and management, review of Project operating budgets, capital budgets and related operating activities.

(b) Consultant shall provide consulting services with respect to SWM and Project compliance with the terms of the contractual and other obligations of the Projects, including matters with respect to compliance with affordable housing obligations, restrictions and requirements.

(c) Consultant shall provide consulting services with respect to the operation and management of social service programs by SWM and the Projects.

(d) Consultant shall provide asset management services to SWM and for the Projects relating to capital improvements and repairs, conversion to permanent financing, and management of investor capital contributions.

(e) Consultant shall provide asset management services to SWM and for the Projects with respect to risk management issues and advise SWM regarding available insurance programs.

(f) At the request of SWM, Consultant shall use reasonable efforts to cause the insurance program operated by Consultant and containing the coverages identified in Exhibit A attached hereto to become available for the Projects through expiration or earlier termination of this Agreement.

The Services rendered by Consultant shall be consistent with the terms, conditions and requirements of the Purchase Agreement and shall be performed in a competent, professional manner consistent with prevailing standards in the community. Consultant shall keep SWM informed of any activities of a material nature that Consultant proposes to take in connection with rendering the Services.

Notwithstanding anything in this Agreement to the contrary, the Services provided by Consultant hereunder shall be consulting and asset management services only and advising SWM with respect thereto. All final decisions on all matters relating to SWM and to the Projects shall remain vested exclusively in SWM, and Consultant shall have no authority to take any action or undertake any commitment binding upon SWM or any of the Projects.

### SECTION 3. COMMENCEMENT AND COMPLETION OF SERVICES.

(a) Upon execution of this Agreement, Consultant shall promptly commence the Services and thereafter prosecute the Services diligently and continuously to completion, all in accordance with the terms of this Agreement and the Purchase Agreement.

(b) Subject to the terms of this Agreement, Consultant shall continuously provide the Services up through the date of the Closing under the Purchase Agreement.

**SECTION 4. ON-SITE SERVICES.** In providing the Services set forth in this Agreement, the parties anticipate that Consultant will have two (2) or more employees of Consultant (or one of its affiliates) physically present at the offices of SWM during normal business hours in order to interact on a continuous basis with SWM and its employees with respect to the operations of SWM and the Projects. SWM agrees to provide suitable office space, access to photocopiers, telephones, faxes, internet and parking for the employees of Consultant providing Services at SWM offices. SWM shall have no responsibility to provide compensation or benefits to employees of Consultant, and Consultant shall indemnify and hold SWM harmless for and from any losses, liabilities, damages and expenses relating to or arising out of the actions or inactions of such employees of Consultant.

**SECTION 5. CONSULTANT'S COMPENSATION; OPERATING SHORTFALLS.**

(a) Operating Revenues and Operating Expenses for SWM shall be calculated on a cash basis based on a calendar month (with the first calendar month being the month of November, 2007). SWM shall be entitled to all Operating Revenues and shall be responsible for all Operating Expenses for periods prior to November 1, 2007. In determining Operating Revenues and Operating Expenses, such calculations shall be made consistent with the customary and historic operating practices of SWM and without accelerating or deferring such revenues or expenses in order to impact Operating Revenues or Operating Expenses in any specific calendar month. Operating Expenses shall also include a reasonable allocation of expenses (including employment related expenses) of Southwest Housing Development Company, Inc. (an affiliate of SWM sharing overhead and other expenses with SWM).

(b) In exchange for providing the Services as set forth herein, Consultant shall be entitled to a monthly consulting fee (the "Fee") in an amount equal to the amount (if any) by which Operating Revenue in any calendar month exceeds Operating Expenses for such month. Such Fee shall be payable monthly on or before the 15<sup>th</sup> day of each month for the Fee payable for the prior calendar month (i.e., the Fee with respect to the operations of SWM for the month of November, 2007 shall be due and payable to Consultant on or before December 15, 2007).

(c) In exchange for the opportunity to become familiar with the internal operations of SWM and the Projects prior to Closing under the Purchase Agreement, Consultant agrees to pay to SWM an amount equal to the amount by which Operating Expenses in any month exceed the Operating Revenues for such month (an "Operating Shortfall"). Such Operating Shortfalls shall be paid by Consultant from time to time upon request by SWM and reasonable evidence from SWM of the basis for the Operating Shortfall, and shall be reconciled monthly by the 15<sup>th</sup> day of each month for the Operating Shortfall (if any) for the prior month (i.e., an Operating Shortfall with respect to the operations of SWM for the month of November, 2007 shall be reconciled on or before December 15, 2007). Notwithstanding the foregoing, Consultant shall not be required to fund any Operating Shortfall in any calendar month in excess of \$60,000, and Operating Shortfalls in excess of \$60,000 shall be funded by parties other than Consultant (and without deferring expenses to a later month or accelerating revenues to an earlier month in order to pay the remainder of such Operating Shortfall).

**SECTION 6. TERMINATION.** If either party shall fail to use its commercially reasonable efforts to perform in a timely manner any material obligation on its part to be performed under the terms of this Agreement ("Defaulting Party"), then the other party hereto ("Non-defaulting Party"), may, without prejudice to any other right or remedy, give written notice to the Defaulting Party of the Non-defaulting Party's intent to terminate this Agreement and this Agreement shall be terminated thirty (30) days after such written notice is received by the Defaulting Party unless the Defaulting Party shall, within such 30-day period, commence to cure any such default and thereafter in good faith expeditiously pursue cure of such default to completion. Notwithstanding the foregoing or anything else in this Agreement to the contrary, (a) either party shall have the right to terminate this Agreement immediately upon notice to the other party if the Purchase Agreement expires or is terminated, and (b) SWM may terminate this Agreement with or without cause at any time upon notice to Consultant. Upon termination of this Agreement, Consultant shall remain entitled to its Fee (if any) and shall be responsible to fund Operating Shortfalls (if any) up to the date of such termination.

**SECTION 7. TAXES AND LICENSES.** Consultant shall be solely responsible for reporting net earnings, if any, from the performance of the Services and paying all federal and state income taxes and payroll taxes on such income as required by applicable law. Consultant shall indemnify, defend and hold harmless SWM from and against the failure to pay all federal, state and local taxes or contributions imposed or required under employment insurance, social security and income tax or other laws with respect to Consultant and Consultant's employees engaged in the performance of the Services. SWM shall have no obligation to withhold federal or state income taxes or payroll taxes under the Federal Insurance Contribution Act or under state or federal employment, disability or other laws from amounts due Consultant hereunder for the performance of the Services or to pay employer payroll taxes thereon. Neither Consultant nor its employees shall be covered by any policy providing Workers' Compensation Insurance obtained by SWM or otherwise be entitled to Workers' Compensation Insurance or benefits obtained by SWM in connection with the performance of the Services. Neither Consultant nor its employees shall be eligible for or allowed to participate in any retirement plan, group insurance policy providing life insurance, disability insurance or hospital or medical benefits, or any other plan providing benefits to employees of SWM with respect to performance of the Services. Consultant shall obtain and maintain in effect any business or professional license required of persons in similar capacity whether self-employed or as an employee of others and will pay any business taxes or fees required in connection therewith.

**SECTION 8. COSTS AND ATTORNEY FEES.** If either SWM or Consultant should find it necessary to employ an attorney to enforce a provision of the Agreement or to recover damages for the breach hereof (including proceedings in bankruptcy), the prevailing party shall be entitled to be reimbursed for its court costs and reasonable attorneys' fees, in addition to all damages, through all levels of appeal.

**SECTION 9. WAIVER.** Any waiver by either of the parties of any breach of any covenant herein contained to be kept and performed by the other party shall only be enforceable if in writing and shall not be deemed or considered as a continuing waiver, and shall not operate

to bar or prevent the damaged party from declaring a forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.

SECTION 10. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

SECTION 11. SEVERABILITY. If any portion or portions of this Agreement is declared void or unenforceable, it shall not affect the other provisions of this Agreement.

SECTION 12. ASSIGNMENT. Neither SWM nor Consultant shall assign this Agreement.

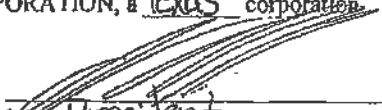
SECTION 13. GOVERNING LAW; INTERPRETATION. This Agreement shall be governed by the laws of the State of Texas. The headings of sections and paragraphs are for convenience only and shall not modify the rights and obligations created under this Agreement. In the event of any conflict between the terms and conditions of this Agreement and the terms of the Purchase Agreement, the terms and conditions of the this Agreement shall control.

SECTION 14. EMPLOYEES OF CONSULTANT. Consultant is acting under this Agreement as an independent contractor and nothing herein contained, or any acts of Consultant or SWM, nor any other circumstances, shall be construed to establish Consultant as an agent of SWM. Furthermore, it is not intended by this Agreement to create any partnership, joint venture or other agreement between Consultant and SWM, and no partnership, joint venture or other relationship is created hereunder other than SWM's retention of Consultant as an independent contractor. Consultant shall use its commercially reasonable efforts and shall do all things necessary and appropriate to perform the Services in an expeditious and economical manner consistent with sound professional practices. Consultant shall be responsible for each of Consultant's employees or other persons performing services to be performed by Consultant hereunder and for determining the manner and time of performance of all acts to be performed by Consultant hereunder. Consultant shall maintain all required industrial and workman's compensation insurance for all employees of Consultant.

(signatures follow)

DATED the day and year first above written.

SWM: SOUTHWEST HOUSING MANAGEMENT  
CORPORATION, a ~~TEXAS~~ corporation.

By:   
Its: President

CONSULTANT: CASCADE AFFORDABLE HOUSING LLC, a  
Washington limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

DATED the day and year first above written.

**SWM:** SOUTHWEST HOUSING MANAGEMENT  
CORPORATION, a \_\_\_\_\_ corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**CONSULTANT:** CASCADE AFFORDABLE HOUSING LLC, a  
Washington limited liability company

By:  \_\_\_\_\_  
Its: \_\_\_\_\_

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Appendix 1544



**CLOSING MEMORANDUM**

TO: Distribution List  
FROM: Southwest Housing Development Company Inc. and its affiliates ("Seller")  
CAH-IDA Southwest LLC and its affiliates ("Buyer")  
DATE: July 17, 2008

**SALE OF GENERAL PARTNERSHIP INTERESTS AND RECEIVABLES  
SOUTHWEST PORTFOLIO  
SECOND CLOSING**

1. On the morning of Friday, July 18, 2008, Ayva Capital LLC and 8<sup>th</sup> Street Capital LLC collectively will wire **\$4,741,056.44** to Hexter-Fair Title Company (the "Escrow Agent") representing equity and mezzanine loan proceeds.
2. Escrow Agent is currently holding **\$2,954,890** plus interest in escrow. Pursuant to the Thirteenth Amendment to Escrow Agreement among Escrow Agent, Buyer and Seller, **\$2,451,535** of the funds in escrow will be applied to the closing and the remaining **\$503,355** plus interest will remain in escrow with Escrow Agent.
3. In connection with the closing, and pursuant to a First Amendment to Holdback Escrow Instructions among Escrow Agent, Buyer and Seller, Escrow Agent will retain **\$20,512.43** to be held by Escrow Agent under the Holdback Escrow Instructions associated with the initial closing.
4. Following the closing, Escrow Agent will disburse **\$742,501.96** out of the available proceeds described above to pay the following costs to designated parties who have submitted to Buyer and Seller an invoice for payment.

American Mgmt Services (Pinnacle)	Property Due Diligence	\$ 25,331.05
Reznick	Accounting Services	\$ 10,069.50
Alamo Title	Abstractor's Certificates	\$ 324.38
Hexter Fair	Recording Fees, Title Reports, Wire Fees	\$ 1,733.00
Unisearch	UCC Searches	\$ 552.50
Gallagher Evelius	MMA DUS Loan Counsel - Pleasanton	\$ 5,650.00
Naman Howell	Wells Fargo Legal Fees-Trustee	\$ 1,000.00
Coats Rose	Pleasant Hill Housing Counsel	\$ 5,000.00
Fulbright & Jaworski	SAHA/SAHFC Legal Fees and Costs	\$ 30,000.00
Holland & Knight	MMA Legal Fees and Costs - ILP	\$ 7,500.00
Holland & Knight	Capmark Legal Fees and Costs - ILP	\$ 31,678.88
Capmark	Const. Loan Transfer Fees - Aldine Bender/Old Manor	\$ 63,900.00
Citi	Lender Legal & Transfer Fees - Old Manor	\$ 130,750.00
Citi	Lender Legal & Transfer Fees - Aldine Bender	\$ 121,475.00
Naman Howell	Travis County HFC Consent Fee - Old Manor	\$ 1,500.00
MMA	SLP Fees	\$ 7,500.00
Pleasant Hill Housing	HUB Interest Purchase	\$ 50,000.00
Thompson & Knight	CAH Texas Counsel	\$ 51,290.89
Broad & Cassel	Seller's Counsel	\$ 84,279.98
Foster Pepper PLLC	CAH counsel	\$ 112,966.78
<b>Total Fees &amp; Expenses</b>		<b>\$ 742,501.96</b>



Carpenter 0588

Southwest  
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5. Following the closing, Escrow Agent will wire ~~\$2,993,569.96~~ to Cascade Affordable Housing representing reimbursement of approved deposits, fees, and expenses.
6. Following the closing, Escrow Agent will wire ~~\$2,314,644.09~~ to Seller (based on wire instructions to be provided by Seller) representing the net proceeds due Seller with respect to the sale.
7. Following the closing, Escrow Agent may retain to cover the fees and costs of Escrow Agent certain amounts to be separately approved in writing by Buyer.
8. Following the closing, Escrow Agent will wire any remaining funds in escrow to CAH-IDA Southwest LLC, but not including withheld amounts being held pursuant to First Amendment to Holdback Escrow Instructions between Seller, Buyer and Escrow Agent.
9. Escrow Agent's receipt of the funds described in Paragraph 2 above shall constitute conclusive proof that all conditions to closing and disbursement have occurred and that Escrow Agent is authorized to disburse funds as provided herein. Escrow Agent has no obligations to disburse any funds until it has received good funds (as defined in the Texas Title Insurance Regulations) with respect to all agreed disbursements set forth herein. All other closing costs, pro rations and other charges are being handled directly between Seller and Buyer. Escrow Agent shall not be liable, and all other parties hereto release Escrow Agent from all liability, for any loss or delay in payment of Escrowed Funds caused by the failure of any financial institution in which Escrowed Funds have been deposited. Escrow Agent shall disburse funds as provided above in a commercially reasonable manner, but shall not be liable for any consequential or other damages resulting from any delay in disbursement.
10. Wire instructions for referenced parties are attached hereto.

ON BEHALF OF EACH BUYER:

CAH-IDA Southwest LLC, a Delaware limited liability company

By CAH-IDA Holdings LLC, a Delaware limited liability company  
Its Manager

By:   
Basil Rallis, Vice President

SELLER:

ON BEHALF OF EACH OF THE SELLERS

By:   
Name: Brian Potashnik  
Its: Authorized Agent

ACCEPTED:

Hexter-Fair Title Company

By: 

Name: CAROL BUCK



#

**CLOSING MEMORANDUM**

TO: Distribution List  
 FROM: Southwest Housing Development Company Inc. and its affiliates ("Seller")  
 CAH-IDA Southwest LLC and its affiliates ("Buyer")  
 DATE: July 17, 2008

**SALE OF GENERAL PARTNERSHIP INTERESTS AND RECEIVABLES  
 SOUTHWEST PORTFOLIO  
 SECOND CLOSING**

1. On the morning of Friday, July 18, 2008, Ayva Capital LLC and 8<sup>th</sup> Street Capital LLC collectively will wire \$4,741,056.44 to Hexter-Fair Title Company (the "Escrow Agent") representing equity and mezzanine loan proceeds.
2. Escrow Agent is currently holding \$2,954,890 plus interest in escrow. Pursuant to the Thirteenth Amendment to Escrow Agreement among Escrow Agent, Buyer and Seller, \$2,451,535 of the funds in escrow will be applied to the closing and the remaining \$503,355 plus interest will remain in escrow with Escrow Agent.
3. In connection with the closing, and pursuant to a First Amendment to Holdback Escrow Instructions among Escrow Agent, Buyer and Seller, Escrow Agent will retain \$20,512.43 to be held by Escrow Agent under the Holdback Escrow Instructions associated with the initial closing.
4. Following the closing, Escrow Agent will disburse \$742,501.96 out of the available proceeds described above to pay the following costs to designated parties who have submitted to Buyer and Seller an invoice for payment.

American Mgmt Services (Pinnacle)	Property Due Diligence	\$	25,331.05
Reznick	Accounting Services	\$	10,069.50
Alamo Title	Abstractor's Certificates	\$	324.38
Hexter Fair	Recording Fees, Title Reports, Wire Fees	\$	1,733.00
Unisearch	UCC Searches	\$	552.50
Gallagher Evelius	MMA DUS Loan Counsel - Pleasanton	\$	5,650.00
Naman Howell	Wells Fargo Legal Fees-Trustee	\$	1,000.00
Coats Rose	Pleasant Hill Housing Counsel	\$	5,000.00
Fulbright & Jaworski	SAHA/SAHFC Legal Fees and Costs	\$	30,000.00
Holland & Knight	MMA Legal Fees and Costs - ILP	\$	7,500.00
Holland & Knight	Capmark Legal Fees and Costs - ILP	\$	31,678.88
Capmark	Const. Loan Transfer Fees - Aldine Bender/Old Manor	\$	63,900.00
Citi	Lender Legal & Transfer Fees - Old Manor	\$	130,750.00
Citi	Lender Legal & Transfer Fees - Aldine Bender	\$	121,475.00
Naman Howell	Travis County HFC Consent Fee - Old Manor	\$	1,500.00
MMA	SLP Fees	\$	7,500.00
Pleasant Hill Housing	HUB Interest Purchase	\$	50,000.00
Thompson & Knight	CAH Texas Counsel	\$	51,290.89
Broad & Cassel	Seller's Counsel	\$	84,279.98
Foster Pepper PLLC	CAH counsel	\$	112,966.78
<b>Total Fees &amp; Expenses</b>		<b>\$</b>	<b>742,501.96</b>



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Southwest  
Page 2 of 2

5. Following the closing, Escrow Agent will wire \$2,993,569.96 to Cascade Affordable Housing representing reimbursement of approved deposits, fees, and expenses.
6. Following the closing, Escrow Agent will wire \$2,314,644.09 to Seller (based on wire instructions to be provided by Seller) representing the net proceeds due Seller with respect to the sale.
7. Following the closing, Escrow Agent may retain to cover the fees and costs of Escrow Agent certain amounts to be separately approved in writing by Buyer.
8. Following the closing, Escrow Agent will wire any remaining funds in escrow to CAH-IDA Southwest LLC, but not including withheld amounts being held pursuant to First Amendment to Holdback Escrow Instructions between Seller, Buyer and Escrow Agent.
9. Escrow Agent's receipt of the funds described in Paragraph 2 above shall constitute conclusive proof that all conditions to closing and disbursement have occurred and that Escrow Agent is authorized to disburse funds as provided herein. Escrow Agent has no obligations to disburse any funds until it has received good funds (as defined in the Texas Title Insurance Regulations) with respect to all agreed disbursements set forth herein. All other closing costs, pro rations and other charges are being handled directly between Seller and Buyer. Escrow Agent shall not be liable, and all other parties hereto release Escrow Agent from all liability, for any loss or delay in payment of Escrowed Funds caused by the failure of any financial institution in which Escrowed Funds have been deposited. Escrow Agent shall disburse funds as provided above in a commercially reasonable manner, but shall not be liable for any consequential or other damages resulting from any delay in disbursement.
10. Wire instructions for referenced parties are attached hereto.

ON BEHALF OF EACH BUYER:

CAH-IDA Southwest LLC, a Delaware limited liability company

By CAH-IDA Holdings LLC, a Delaware limited liability company  
Its Manager

By:   
Basil Rallis, Vice President

SELLER:

ON BEHALF OF EACH OF THE SELLERS

By:   
Name: Brian Potashnik  
Its: Authorized Agent

ACCEPTED:

Hexter-Fair Title Company

By:   
Name: CHAD ERICK

Carpenter 0589

Appendix 1548

**From:** Brian Potashnik <BPotashnik@Southwesthousing.com>  
**Sent:** Monday, June 26, 2006 12:28 PM  
**To:** Jeff Carpenter <JCarpenter@Southwesthousing.com>  
**Subject:** FW: Greystone Meeting

I would appreciate if you handled this meeting in SA for tomorrow. Please confirm with me that it works for you. Thanks

-----Original Message-----

**From:** Heinsman, Kelley [mailto:Kelley.Heinsman@rbcm.com]  
**Sent:** Monday, June 26, 2006 7:59 AM  
**To:** Cheryl Potashnik; Brian Potashnik; Sara Reidy; Keith Jones  
**Cc:** Nordin, Natalie; Mohajer, Shar  
**Subject:** Greystone Meeting

Good morning,

Please find below a short overview of Greystone & Co. for the meeting tomorrow. Attending from Greystone will be Shari Leigh Gordon and Bill Guessford (biography below). Brian, we will meet you in the lobby of the Marriott Riverwalk in San Antonio at 9:00 AM. On Wednesday, we will meet at Southwest's office at 8:30 AM for the management meeting and, if there's time, see a few more properties in Dallas. Greystone, Shari, and myself are scheduled to fly out around 2:00 PM on Wednesday.

#### Corporate Overview:

Greystone & Co., Inc. with its affiliated companies, is a private investment and real estate organization with expertise in a range of loan products, servicing, trading, securitization and transaction structuring. The Greystone family of companies includes:

- \* A leading national lender that offers multifamily, seniors housing, health care facility, small-balance commercial, and asset-based business loans via its Fannie Mae DUS™, FHA, conventional taxable, and tax-exempt direct lending programs.
- \* A servicing company that services approximately \$7 billion of multifamily, seniors housing, health care and commercial loans.
- \* An investment-banking group specializing in innovative transaction management, deal structuring, workouts and equity special situations.
- \* A company trading in mortgages, federally guaranteed student loans and other debt obligations with a typical tax-exempt and taxable portfolio in excess of \$1 billion.
- \* A real estate company active in development and redevelopment of residential rental and condominium properties, office properties, and health care facilities.

#### Biographies:

##### Bill Guessford

William B. Guessford is the Managing Director of Greystone's Acquisitions and REO division. He is the Senior Vice President of Greystone Property Management Corporation and is a member of the Loan Committee. He provides oversight of all REO properties and participates in the analysis and purchase of new assets. His group is responsible for the annual Fannie Mae property inspections and intervention in troubled assets. He has been managing multi-family properties throughout the United States since 1982, with an emphasis on troubled assets and HUD insured properties. Prior to joining Greystone, Mr. Guessford was an Asset Manager for Housing Preservation Associates, Inc., a Regional VP for Insignia Management Group and also managed properties for Trammel Crow Residential Services. Mr. Guessford is a Certified Property Manager from the Institute of Real Estate Management, holds the CAM, CAMII and CAMT designations through the National Apartment Association as well as the National Assisted Housing Professional designation through the National Assisted Housing Management Association.

**Kelley Heinsman**  
RBC Capital Markets  
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**From:** Keith Jones <kjones@Southwesthousing.com>  
**Sent:** Wednesday, January 17, 2007 10:31 AM  
**To:** Sara Reidy <SReidy@Southwesthousing.com>; Jeff Carpenter  
<JCarpenter@Southwesthousing.com>  
**Subject:** LOI document  
**Attach:** LOI-Cascade.tif

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<<LOI-Cascade.tif>>

**Keith R Jones**

Chief Financial Officer

Southwest Housing

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Dallas, Texas 75206

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\*\*\*\*\*  
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\*\*\*\*\*



Appendix 1550

**From:** Jeff Carpenter  
**Sent:** Tuesday, March 13, 2007 3:37 PM  
**To:** Jeff Carpenter <JCarpenter@Southwesthousing.com>  
**Subject:** BP

---

**Notes to Discuss Business Items with Brian:**

1. Meadow Lane Fire... \$35-40 K
2. Vegas... Refinance... Market... Sale... Refinance proceeds to JC dollars... Cohen fee...
3. Growth that from day one I lead active positive change from all central services, mgmt, construction and development
4. Pinnacle meeting and lack of personnel decisions
  - a. Transition items:
    - i. Personnel decisions...stay and pay incentives
    - ii. List of questions
    - iii. Office space and equipment and furnishings
    - iv. REDACTE stay plan REDACTED
5. FEMA reimbursements of \$179k
6. Performance reviews, raises, bonuses earned and transition bonuses to existing corporate personnel and site staff, REDACTED
7. Shadow Mountain—Lowes Development next door.



**From:** Basil Rallis <Brallis@cascadeaffordable.com>  
**Sent:** Thursday, April 12, 2007 4:46 PM  
**To:** Jeff Carpenter <jcarpenter@southwesthousing.com>  
**Cc:** Jeff Hoster <jhoster@prmc.com>; Jeanne Wheeler <jwheeler@prmc.com>; Rick Graf <Rgraf@prmc.com>; Cheryl Potashnik <cpotashnik@southwesthousing.com>  
**Subject:** Cascade Tour

---

Jeff,

As I mentioned on the phone, on the 16th I will be in San Antonio, with Vicki Aponik, the underwriter for our investor. We were going to get started at 8:30 to see as many of the SA properties as we can by 2:30, when she needs to meet up with our market rate group Olympic Investors. We are flying to Dallas on the 17th, and she would like to see as many of the Dallas properties as possible starting mid morning of the 18th, until about 4, when she will need to get to the airport.

Let me know what will be easiest for you. Jeannie Wheeler, in Pinnacle's San Antonio office, can help us not get lost in San Antonio, but I could use your help in Dallas to cover as much ground as we can. Rick and Jeff Hoster would not be available because of other commitments. This is for Vicki to get a favor for the properties and locations.

Basil

Basil P. Rallis  
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Cascade Affordable Housing  
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# **Appendix Exhibit 14**

## **Declaration of Amy Gibson**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

Jeffrey W. Carpenter,	§	
	§	
<i>Plaintiff,</i>	§	
	§	
<i>v.</i>	§	
	§	Civil Action No. 3:23-CV-00769-N
Twin City Fire Insurance Company,	§	
	§	Jury Demand
<i>Defendant.</i>	§	

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**DECLARATION OF AMY GIBSON**

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1. My name is Amy Elizabeth Gibson. The facts and statements that I make in this declaration are true and accurate. Unless otherwise stated or apparent from my testimony, I have personal knowledge of the facts and statements that I make in this declaration. I do not intend to waive any privilege in making this declaration. A true and correct copy of my current attorney biography is attached.
2. I am one of the attorneys who represents Plaintiff Jeff Carpenter in this lawsuit. I am also one of the attorneys who represented Jeff Carpenter in the prior lawsuit giving rise to the *Stowers* claim at issue here. That prior lawsuit was in Dallas County Court at Law No. 5, Cause Number CC-08-2072-E, and styled *Jeffrey W. Carpenter v. Southwest Housing Development Company, Inc., Southwest Housing Management Corporation, Inc. a/k/a and d/b/a Southwest Housing Management Company, Inc., Affordable Housing Construction, Inc., and Brian Potashnik*. That prior lawsuit is abbreviated here as the “prior case.” I also served as lead trial counsel for Jeff Carpenter in the prior case.
3. This declaration authenticates certain documents in the *Appendix in Support of Jeff Carpenter’s Motion for Summary Judgment*. That filing is abbreviated here as “Appendix.”
4. Each time this declaration testimony refers to true and correct copies, the following, which were not part of the originals, are excepted: (1) the Appendix bates-numbers, and (2) any highlighting or similar markings that may be added to the Appendix exhibits to assist the Court in deciding the summary judgment motion.



5. The two attachments to the Appendix Exhibit 2 Stipulation are true and correct copies of (1) the accompanying cover letter and *Final Judgment* in the prior case and (2) the turnover order in the prior case — *i.e.*, the *Order Granting Amended Motion for Turnover of Stowers Claim*.

6. Appendix Exhibit 5 is a true and correct copy of excerpts from the liability insurance policy — including endorsements, declarations, notices, and a cover letter —, that Defendant Twin City Fire Insurance Company produced in this *Stowers* lawsuit. However, the Twin City document production bates-numbers were removed because they made the Appendix bates-numbers unreadable. These excerpts constitute the complete employment practices liability insurance agreement at issue in this *Stowers* lawsuit. These excerpts exclude irrelevant coverage parts, such as kidnapping and ransom.

7. Appendix Exhibit 6 is a true and correct copy of a March 11, 2016 policy coverage analysis with original exhibits. The bright-yellow highlighting and red markings were part of the original coverage analysis document. I personally prepared that coverage analysis and sent that coverage analysis to Twin City Fire Insurance Company, through its attorney Steven Knight, for consideration in connection with the *Stowers* settlement offer in the prior case.

8. Appendix Exhibit 6 includes the original exhibits to the March 11, 2016 policy coverage analysis. Those original exhibits include true and correct copies [other than any added highlighting and red marks that were not part of the originals] of:

(1) *Jeffrey W. Carpenter's Second Amended Petition and Jury Demand* in the prior case — the operative petition on file during the *Stowers* offer consideration period;

(2) excerpts from asset purchase and sale documents that the asset purchaser produced to me in the prior case;

(3) Texas Secretary of State filings for the entity defendants in the prior case — I personally downloaded these filings from the Texas Secretary of State website, using our law firm password to access the website commonly known as *SOS Direct*, and searching for and finding the entity defendant filings with the Texas Secretary of State;

(4) the file-stamped first page of the original petition in the prior case;

(5) the returns of service for service of process on each defendant in the prior case.


9. Appendix Exhibit 8 is a true and correct copy of the Charge of the Court including jury verdict in the prior case, with redaction of juror names.

10. Appendix Exhibit 9 is a true and correct copy of excerpts from *Jeffrey Carpenter's Third Amended Petition and Jury Demand* in the prior case. This was the operative petition on file at the time of the jury verdict and final judgment in the prior case.

11. Appendix Exhibit 13 is a true and correct copy of excerpts from the trial transcript in the prior case. These excerpts include the complete presentation to the jury other than most trial exhibits and trial visuals. These excerpts exclude pretrial hearings, most bench conferences, the charge conference, and most of jury selection.

**My name is Amy Elizabeth. My date of birth is December 7, 1968. I declare under penalty of perjury that my testimony above is true and correct.**

**Executed in Dallas County, Texas on July 12, 2024.**



---

Amy Elizabeth Gibson